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CONFLICTS OF INTEREST

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HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

EIGHTY-SEVENTH CONGRESS

SECOND SESSION

ON

H.R. 8140

TO STRENGTHEN THE CRIMINAL LAWS RELATING TO
BRIBERY, GRAFT, AND CONFLICTS OF INTEREST, AND
FOR OTHER PURPOSES

JUNE 21, 1962

Printed for the use of the Committee on the Judiciary



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1962

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CONTENTS

Statement of—

Berger, Raoul, chairman, Section of Administrative Law, American Bar Association.....	Page 52
Houser, Adm. Harold A. (retired), legislative counsel, Retired Officers Association, Washington, D.C.....	56
Javits, Hon. Jacob K., a U.S. Senator from the State of New York...	74
Katzenbach, Nicholas deB., Deputy Attorney General of the United States, accompanied by Sol Lindenbaum and David Stephenson, Office of Legal Counsel, Department of Justice, Washington, D.C...	16
Keating, Hon. Kenneth B., a U.S. Senator from the State of New York.....	8
Lindsay, Hon. John V., a Representative in Congress from the 17th Congressional District of the State of New York.....	35
Perkins, Roswell B., chairman, special committee on the Federal conflict of interest laws, Association of the Bar of the City of New York, accompanied by Charles A. Horsky, attorney at law, Washington, D.C., and Alexander C. Hoagland, Jr., attorney at law, New York, N.Y.....	42
Taussig, Capt. Joseph K., U.S. Navy (retired), Washington, D.C....	70
Willenbacher, Capt. Franz O., U.S. Navy (retired), National Counsel of the Commissioned Officers Association, Public Health Service and the Association of Commissioned Officers, Coast and Geodetic Survey.....	60
Statement submitted by Reserve Officers Association of the United States, Washington, D.C.....	94

EXHIBITS

Copy of the bill H.R. 8140.....	1
Four amendments to the bill H.R. 8140 as proposed by Mr. Keating for himself and Mr. Javits.....	10
Letter dated July 23, 1962, addressed to Hon. James O. Eastland from Nicholas deB. Katzenbach, Deputy Attorney General of the United States.....	24
Number of U.S. Commissioners serving, a compilation prepared by the Administrative Office of the U.S. Courts and submitted by Senator Roman L. Hruska.....	31
Copy of the bill S. 603.....	78
Copy of the bill S. 637.....	91
Letter dated June 21, 1962, addressed to Hon. James O. Eastland from Wilbur J. Cohen, Assistant Secretary, Department of Health, Education, and Welfare, Washington, D.C.....	92
Letter dated June 23, 1962, addressed to Hon. James O. Eastland from Hon. Henry M. Jackson, with attachments.....	96
Letter dated June 15, 1962, addressed to Hon. James O. Eastland from Judge William F. Smith, U.S. Circuit Court of Appeals for the Third Circuit, and Chairman of the Committee on the Administration of Criminal Law, Judicial Conference of the United States.....	99

CONFLICTS OF INTEREST

THURSDAY, JUNE 21, 1962

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 10:40 a.m., in room 2228, New Senate Office Building, Senator Olin D. Johnston presiding.

Present: Senators Johnston, Wiley, Hruska, Keating, and Ervin.

Also present: Thomas B. Collins, professional staff member.

Senator JOHNSTON. The committee will come to order.

Pursuant to notice contained in the Congressional Record of June 13, 1962, the Committee on the Judiciary today opens hearings on H.R. 8140, a bill to strengthen the criminal laws relating to bribery, graft and conflicts of interest.

H.R. 8140 passed the House of Representatives last August 7, 1961, and is presently pending before this committee. The bill will be made a part of the record at this point.

(H.R. 8140 follows:)

[H.R. 8140, 87th Cong., 1st sess.]

AN ACT To strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) so much of chapter 11 of title 18 of the United States Code as precedes section 214 is amended to read as follows:

"CHAPTER 11—BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

- "Sec.
- "201. Bribery of public officials and witnesses.
- "202. Definitions.
- "203. Compensation of Members of Congress, officers and others, in matters affecting the Government.
- "204. Practice in Court of Claims by Members of Congress.
- "205. Activities of officers and employees in claims against and other matters affecting the Government.
- "206. Exemption of retired officers of the Armed Forces.
- "207. Disqualification of former officers and employees in matters connected with former duties or official responsibilities; disqualification of partners.
- "208. Acts affecting a personal financial interest.
- "209. Salary of Government officials and employees payable only by United States.
- "210. Offer to procure appointive public office.
- "211. Acceptance or solicitation to obtain appointive public office.
- "212. Offer of loan or gratuity to bank examiner.
- "213. Acceptance of loan or gratuity by bank examiner.
- "214. Offer for procurement of Federal Reserve bank loan and discount of commercial paper.
- "215. Receipt of commissions or gifts for procuring loans.
- "216. Receipt or charge of commissions or gifts for farm loan, land bank, or small business transactions.
- "217. Acceptance of consideration for adjustment of farm indebtedness.
- "218. Voiding transactions in violation of chapter; recovery by the United States.

“§ 201. Bribery of public officials and witnesses

“(a) For the purpose of this section :

“‘public official’ means Member of Congress, or Resident Commissioner, either before or after he has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror ; and

“‘person who has been selected to be a public official’ means any person who has been nominated or appointed to be a public official, or has been officially informed that he will be so nominated or appointed ; and

“‘official act’ means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in his official capacity, or in his place of trust or profit.

“(b) Whoever, directly or indirectly, corruptly gives, offers or promises anything of value to any public official or person who has been selected to be a public official, or offers or promises any public official or any person who has been selected to be a public official to give anything of value to any other person or entity, with intent—

“(1) to influence any official act ; or

“(2) to influence such public official or person who has been selected to be a public official to commit or aid in committing, or collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States ; or

“(3) to induce such public official or such person who has been selected to be a public official to do or omit to do any act in violation of his lawful duty, or

“(c) Whoever, being a public official or person selected to be a public official, directly or indirectly, corruptly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself or for any other person or entity, in return for :

“(1) being influenced in his performance of any official act ; or

“(2) being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States ; or

“(3) being induced to do or omit to do any act in violation of his official duty ; or

“(d) Whoever, directly or indirectly, corruptly gives, offers, or promises anything of value to any person, or offers or promises such person to give anything of value to any other person or entity, with intent to influence the testimony under oath or affirmation of such first-mentioned person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or with intent to influence such person to absent himself therefrom ; or

“(e) Whoever, directly or indirectly, corruptly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself or for any other person or entity in return for being influenced in his testimony under oath or affirmation as a witness upon any such trial, hearing, or other proceeding, or in return for absenting himself therefrom—

“Shall be fined not more than \$20,000 or three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than fifteen years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.

“(f) Whoever, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly gives, offers, or promises anything of value to any public official, former public official, or person selected to be a public official, for or because of any official act performed or to be performed by such public official, former public official, or person selected to be a public official ; or

“(g) Whoever, being a public official, former public official, or person selected to be a public official, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself for or because of any official act performed or to be performed by him ; or

“(h) Whoever, directly or indirectly, gives, offers, or promises anything of value to any person, for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or for or because of his absence therefrom; or

“(i) Whoever, directly or indirectly, asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself for or because of the testimony under oath or affirmation given or to be given by him as a witness upon any such trial, hearing, or other proceeding, or for or because of his absence therefrom—

“Shall be fined not more than \$10,000 or imprisoned for not more than two years, or both.

“(j) Subsections (d), (e), (h), and (i) shall not be construed to prohibit the payment or receipt of witness fees provided by law, or the payment, by the party upon whose behalf a witness is called and receipt by a witness, of the reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance at any such trial, hearing, or proceeding, or, in the case of expert witnesses, involving a technical or professional opinion, a reasonable fee for time spent in the preparation of such opinion, and in appearing and testifying.

“(k) The offenses and penalties prescribed in this section are separate from and in addition to those prescribed in sections 1503, 1504, and 1505 of this title.”

“§ 202. Definitions

“(a) For the purpose of sections 203, 205, 207, 208, and 209 of this title the term ‘special Government employee’ shall mean an officer or employee of the executive branch of the United States Government, of any independent agency of the United States or of the District of Columbia, who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis. Notwithstanding section 29 (c) and (d) of the Act of August 10, 1956 (70A Stat. 632; 5 U.S.C. 30r (c) and (d)), a Reserve officer of the Armed Forces, or an officer of the National Guard of the United States, unless otherwise an officer or employee of the United States, shall be classified as a special Government employee while on active duty solely for training. A Reserve officer of the Armed Forces or an officer of the National Guard of the United States who is serving a period of extended active duty in excess of one hundred and thirty days shall be classified as an officer of the United States within the meaning of section 203 and sections 205 through 209 and 218. The terms ‘officer or employee’ and ‘special Government employee’ as used in sections 203, 205, 207 through 209, and 218, shall not include enlisted members of the Armed Forces.

“(b) For the purpose of sections 203, 205, and 207 of this title, the term ‘official responsibility’ means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action.

“§ 203. Compensation to Members of Congress, officers, and others in matters affecting the Government

“(a) Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receives or agrees to receive, or asks, demands, solicits, or seeks, any compensation for any services rendered or to be rendered either by himself or another—

“(1) at a time when he is a Member of Congress, Member of Congress Elect, Resident Commissioner, or Resident Commissioner Elect; or

“(2) at a time when he is an officer or employee of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States, including the District of Columbia, in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, court-martial, officer, or any civil, military, or naval commission, or

“(b) Whoever, knowingly, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly gives, promises, or offers any compensation for any such services rendered or to be rendered at a time when the person to whom the compensation is given, promised, or offered, is or was such a Member, Commissioner, officer, or employee—

“Shall be fined not more than \$10,000 or imprisoned for not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States.

“(c) A special Government employee shall be subject to subsection (a) only in relation to a particular matter (1) in which he has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or (2) which is or within two years has been a subject of his official responsibility, or (3) which is pending in the department or agency of the Government in which he is serving: *Provided*, That clause (3) shall not apply in the case of a special Government employee who serves no more than fifteen days during any period of three hundred and sixty-five consecutive days.

“§ 204. Practice in Court of Claims by Members of Congress

“Whoever, being a Member of Congress, Member of Congress Elect, Resident Commissioner, or Resident Commissioner Elect, practices in the Court of Claims, shall be fined not more than \$10,000 or imprisoned for not more than two years, or both, and shall be incapable of holding any office of honor, trust, or profit under the United States.

“§ 205. Activities of officers and employees in claims against and other matters affecting the Government

“Whoever, being an officer or employee of the United States in the executive, legislative, or judicial branch of the Government or in any agency of the United States, including the District of Columbia, otherwise than in the proper discharge of his official duties—

“(1) acts as agent or attorney for prosecuting any claim against the United States, or receives any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim, or

“(2) acts as agent or attorney for anyone before any department, agency, court, court-martial, officer, or any civil, military, or naval commission in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest—

“Shall be fined not more than \$10,000 or imprisoned for not more than two years, or both.

“A special Government employee shall be subject to the preceding paragraphs only in relation to a particular matter (1) in which he has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or (2) which is or within two years has been a subject of his official responsibility, or (3) which is pending in the department or agency of the Government in which he is serving: *Provided*, That clause (3) shall not apply in the case of a special Government employee who serves no more than fifteen days during any period of three hundred and sixty-five consecutive days.

“Nothing herein prevents an officer or employee from taking uncompensated action, not inconsistent with the faithful performance of his duties, to aid or assist any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings with respect to those proceedings.

“Nothing herein or in section 203 prevents an officer or employee, including a special Government employee, from acting, with or without compensation, as agent or attorney for or otherwise aiding or assisting his parents, spouse, child, or any person for whom he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except in those matters in which he has participated personally and substantially as a Government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which are the subject of his official responsibility, provided that the Government official responsible for appointment to his position approves.

"Nothing herein or in section 203 or 207 prevents a present or former special Government employee from aiding or assisting another person in the performance of work under a contract with or for the benefit of the United States provided that the head of such special Government employee's department or agency shall certify in writing that the national interest requires such aid or assistance.

"Such certification shall be published in the Federal Register.

"Nothing herein prevents an officer or employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

"§ 206. Exemption of retired officers of the Armed Forces

"Sections 203 and 205 of this title shall not apply to a retired officer of the Armed Forces of the United States while not on active duty and not otherwise an officer or employee of the United States, or to any person specially excepted by Act of Congress.

"§ 207. Disqualification of former officers and employees in matters connected with former duties or official responsibilities; disqualification of partners

"(a) Whoever, having been an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, after his employment has ceased, knowingly acts as agent or attorney for anyone other than the United States in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claims, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest and in which he participated personally and substantially as an officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, while so employed, or

"(b) Whoever, having been so employed, within two years after his last employment has ceased, appears personally before any court or department or agency of the Government as agent, or attorney for, anyone other than the United States in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or directly and substantially interested, and which was under his official responsibility as an officer or employee of the Government at any time within a period of two years prior to the termination of his employment—

"Shall be fined not more than \$10,000 or imprisoned for not more than two years, or both.

"(c) Whoever, being a partner of a former officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a former special Government employee, engages, during a period of two years following the termination of the latter's employment by the Government, in any activities which such former officer or employee of the Government or special Government employee is himself prohibited from engaging in by subsection (a) hereof; or

"(d) Whoever, being a partner of an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, acts as agent or attorney for anyone other than the United States, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest and in which such officer or employee of the Government or special Government employee participates or has participated personally and substantially as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or which is the subject of his official responsibility—

"Shall be fined not more than \$5,000, or imprisoned not more than one year, or both.

"A partner of a present or former officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia or of a present or former special Govern-

ment employee shall as such be subject to the provisions of sections 203, 205, and 207 of this title only as expressly provided in subsections (c) and (d) of this section.

“§ 208. Acts affecting a personal financial interest

“(a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a Government action, proceeding, or other particular matter in which, to his knowledge, he, his spouse, child, partner, business organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest,

“Shall be fined not more than \$10,000, or imprisoned not more than two years, or both.

“(b) Subsection (a) hereof shall not apply (1) if the officer or employee first advises the Government official responsible for appointment to his position of the nature and circumstances of the action, proceeding, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee, or (2) if, by general rule or regulation published in the Federal Register, the financial interest has been exempted from the requirements of clause (1) hereof as being too remote or too inconsequential to affect the integrity of Government officers’ or employees’ services.

“§ 209. Salary of Government officials and employees payable only by United States

“(a) Whoever receives any salary, or any contribution to or supplementation of salary, as compensation for his services as an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality; or

“Whoever, whether an individual, partnership, association, corporation, or other organization pays, or makes any contribution to, or in any way supplements the salary of, any such officer or employee under circumstances which would make its receipt a violation of this subsection—

“Shall be fined not more than \$5,000 or imprisoned not more than one year, or both.

“(b) Nothing herein prevents an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States, or of the District of Columbia, from continuing to participate in a bona fide pension, retirement, group life, health or accident insurance, profit-sharing, stock bonus, or other employee welfare or benefit plan maintained by a former employer.

“(c) This section does not apply to a special Government employee or to an officer or employee of the Government serving without compensation, whether or not he is a special Government employee, or to any person paying, contributing to, or supplementing his salary as such.”

“(d) This section does not prohibit payment or acceptance of contributions, awards, or other expenses under the terms of the Government Employees Training Act (Public Law 85-507, 72 Stat. 327; 5 U.S.C. 2301-2319, July 7, 1958).”

(b) Sections 214 and 215 of chapter 11 of title 18 of the United States Code are respectively redesignated sections 210 and 211;

(c) Sections 216 and 223 of chapter 11 of title 18 of the United States Code are repealed;

(d) Sections 217, 218, 219, 220, 221, and 222 of chapter 11 of title 18 of the United States Code are respectively redesignated sections 212, 213, 214, 215, 216, and 217;

(e) Chapter 11 of title 18 of the United States Code is further amended by adding at the end thereof the following new section :

“§ 218. Voiding transactions in violation of chapter; recovery by the United States

“In addition to any other remedies provided by law the President or, under regulations prescribed by him, the head of any department or agency involved, may declare void and rescind any contract, loan, grant, subsidy, license, right, permit, franchise, use, authority, privilege, benefit, certificate, ruling, decision, opinion, or rate schedule awarded, granted, paid, furnished, or published, or the performance of any service or transfer or delivery of any thing to, by or for any agency of the United States or officer or employee of the United States or person acting on behalf thereof, in relation to which there has been a final conviction for any violation of this chapter, and the United States shall be entitled to recover in addition to any penalty prescribed by law or in a contract the amount expended or the thing transferred or delivered on its behalf, or the reasonable value thereof.”

SEC. 2. Sections 281 and 283 (except as they may apply to retired officers of the armed forces of the United States), 282 and 284 of chapter 15 of title 18, section 434 of chapter 23 of title 18, and section 1914 of chapter 93 of title 18 of the United States Code are repealed and will, respectively, be supplanted by sections 203, 205, 204, 207, 208, and 209 of title 18 of the United States Code as set forth in section 1 of this Act. All exemptions from the provisions of sections 281, 282, 283, 284, 434, or 1914 of title 18 of the United States Code heretofore created or authorized by statute which are in force on the effective date of this Act shall, on and after that date, be deemed to be exemptions from sections 203, 204, 205, 207, 208, or 209, respectively, of title 18 of the United States Code except to the extent that they affect officers or employees of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, as to whom they are no longer applicable.

SEC. 3. Section 190 of the Revised Statutes (5 U.S.C. 99) is repealed.

SEC. 4. This Act shall take effect ninety days after the date of its enactment. Passed the House of Representatives August 7, 1961.

Attest :

RALPH R. ROBERTS, *Clerk.*

Senator JOHNSTON. The bill has the support of the President, and represents the consensus of the principal agencies, both Government and private, which long have been concerned with or have experienced the necessity for corrective legislation in this area.

The President of the United States, on April 27, 1961, sent a special message to the Congress dealing with conflicts of interest and ethics on the part of Government officials. He accompanied this message with proposed legislation, the more important elements of which have been incorporated in H.R. 8140.

The bill presently pending before us is a combination of presidential recommendations, recommendations of the Association of the Bar of the City of New York which spent over 2 years in the study of this matter, and efforts of a House Judiciary Subcommittee under Chairman Celler, all of which are wrapped up in this one bill.

The Attorney General of the United States appeared before the full Committee on the Judiciary in executive session on August 31, 1961, and discussed this proposal in great detail with our committee.

The hearing today has been called by Senator Eastland so as to obtain additional comments from the Department of Justice, the Association of the Bar of the City of New York, the American Bar Association, and other interested persons.

We welcome as our first witness of the morning the Deputy Attorney General of the United States, Nicholas deB. Katzenbach.

Will you please come around, and you may proceed as you see fit.

Pardon me, I believe before you begin Senator Keating has a statement he would like to make at this time.

Senator KEATING. Mr. Chairman, this is a subject in which I have had a deep interest. I have sponsored legislation relating to conflict of interest. Any legislation on this subject at this particular time is bound to bear the impact of the *Billie Sol Estes* case. That, it should be made very clear, is something for another committee to go into. It is our responsibility, however, it seems to me, to devise laws that are adequate to cope with incidents like the *Billie Sol Estes* case. If we succeed in this task we will be making a lasting contribution to good government, one that will have value long after the events of the *Estes* case, or any other case, have faded away.

Existing Federal laws on conflict of interest, and the related problems of bribery, graft and corrupt practices, are outdated, inconsistent, vague and inadequate. Many of the pertinent statutes are a century old and were written for the problems of another era of government.

Congress has been struggling with this subject for many years, but its efforts to date have not been fruitful. We were given a great assist in 1960 by the work and report of a special committee of the Association of the Bar of the City of New York under the leadership of Roswell B. Perkins. The bill before us is similar in many of its provisions to that recommended by the bar committee which I co-sponsored with my colleague Senator Javits, in the Senate. There are several important respects in which the bill before us falls short of what is required to deal with the conflict of interest problem with complete realism and effectiveness. They are four in number.

First, the bill provides no civil or administrative procedure to insure the effective enforcement of the conflict of interest statutes.

Second, the bill omits any reference to ex parte communications relating to matters pending before the Government boards, agencies, and departments.

Third, the bill provides no machinery for resolving the multitude of conflict of interest problems with which Members of Congress are confronted.

Fourth and most important of all in light of cases like the *Billie Sol Estes* case, the bill provides no prohibitions against the acceptance of gifts. I have submitted four amendments to close these loopholes in the House-passed bill. And I ask unanimous consent, at the conclusion of my opening remarks, Mr. Chairman, to insert the text of these four amendments which I am proposing to the bill before us.

Senator JOHNSTON. Hearing no opposition, it shall be made a part of the record.

Senator KEATING. Under the first amendment, heads of departments and agencies, if directed by presidential regulation, would have a degree of administrative control over employees who violate any of the provisions found in H.R. 8140. This would not affect the application of criminal penalties in appropriate cases. There are many conflict of interest situations, however, in which a large gray area exists. The demanding requirements of guilt beyond a reasonable doubt in criminal cases may make it extremely difficult to prevail in criminal proceedings in cases which definitely warrant civil or administrative sanctions.

President Kennedy, in his message to the Congress on April 27, 1961, recognized the need for this dual approach to enforce the conflict of interest laws. In that message he said:

Most of the existing laws are criminal statutes. As such, they have been strictly construed and, because of their harshness, infrequently invoked. By granting this added flexibility we help to insure more effective enforcement. In addition, the regulations which are adopted will permit more specific adaptation of the general prohibitions tailored to the activities of particular agencies.

It is clear from the President's message that he recognized a form of administrative enforcement as an important ingredient for conflict of interest legislation. And I hope very much in our consideration of this bill we will be able to incorporate something along those lines as suggested by the President.

My second proposed amendment also was supported in the President's message which recognized the need for dealing with ex parte communications to Government agencies. In that connection he stated:

Some of the most spectacular examples of official misconduct have involved ex parte communication—undisclosed informal contact between an agency official and a party interested in a matter before that official. Such covert influence on agency action often does basic injury to the fairness of agency proceedings, particularly when those proceedings are judicial in nature.

This amendment is derived from the provisions of S. 637, which I sponsored in the last session of Congress. Under its provisions communications received by Government agencies from Members of Congress, whether written or oral, would be made a part of the public record of the matter to which the communication referred. I feel very strongly that is desirable in the public interest and in the interest of the Members of Congress.

My third amendment also is designed to deal with congressional conflict of interest problems. The people have a right to expect the same high standards of conduct from Members of Congress and employees of the legislative branch as they do from the executive department. My amendment recognizes the special problems of Congress, but it strongly rejects any notion that Members of Congress should be exempt from the high ethical standards which we expect of all members of the Government.

Under this amendment the Joint Congressional Committee on Ethics would be established within the Congress to make a study of conflict-of-interest problems. The Rules Committee of the Senate would be given duties similar to those of the typical grievance or ethics committees of bar associations, medical societies, and other professional organizations. It would consider all matters arising in connection with legislative conflicts of interest and would issue public interpretative opinions for the guidance of Members either on request or on its own initiative. In short, it would provide general guidelines for action as well as effective machinery for resolving specific congressional conflict-of-interest problems. Without such machinery, each Member must act on his own judgment, which, in the light of the pressures on him, may be a very faulty guide to what is right, no matter how good his intentions may be.

My last amendment is directed to an area in our conflict-of-interest laws where there now exists almost a complete void—that is, gifts to Federal employees. News out of Texas and Washington in the last

few weeks might lead one to think that Billie Sol Estes was the Santa Claus of Texas. Under existing law the acceptance of a gift by a Federal employee may not be illegal even though the employee's agency or department does regular business with the donor. This in my opinion is absurd and should be changed.

Under the amendment I suggest gifts to Federal employees would be banned if the employee has reason to believe the donor would not give the gift but for the employee's position. In addition, the bill would bar gifts to Federal employees from donors having business relations with the employee's agency or where the donor conducts operations regulated by the employee's agency. Such obvious attempts at influence peddling or the purchasing of good will should be strictly prohibited.

Popular support for conflict-of-interest legislation is an absolute prerequisite for the effective enforcement of laws on this subject. Apathy, indifference or open hostility to any law generates obstacles which may overwhelm even the best enforcement program. Events in the last few weeks have provided a dramatic setting for the long-needed revisions of our conflict-of-interest legislation. It is my hope that we will profit from this situation by enacting an effective law in this session of Congress.

This is a subject, Mr. Chairman, which has been before us for a long time, all of the time since I have served in the Congress, and I do hope that at this session we can come to grips with it and enact legislation.

Thank you very much.

(The proposed amendments by Senator Keating are as follows:)

[H.R. 8140, 87th Cong., 2d sess.]

AMENDMENT Intended to be proposed by Mr. Keating (for himself and Mr. Javits) to the bill (H.R. 8140) to strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes, viz: On page 21, line 19, insert the following:

§ 401. Preventive measures

The head of an agency may, and shall do so if so provided in regulations issued by the President, require—

(a) individuals entering Government employment with such agency and, periodically, the employees or particular categories of employees of such agency, to sign a statement that they have read an appropriate summary of the rules established by this Act and the regulations issued hereunder;

(b) employees of such agency, or particular categories thereof, to report periodically as to their non-Government employment or self-employment, if any.

§ 402. Remedies; civil penalties; procedure

(a) **ADMINISTRATIVE ENFORCEMENT AS TO CURRENT GOVERNMENT EMPLOYEES.—**

(1) **REMEDIES AND CIVIL PENALTIES:** The head of an agency may dismiss, suspend, or take such other action as may be appropriate in the circumstances in respect of any Government employee of his agency upon finding that such employee has violated this Act or regulations promulgated hereunder. Such action may include the imposition of conditions of the nature described in subsection (b) (1).

(2) **PROCEDURE:** The procedures for any such action shall correspond to those applicable for disciplinary action for employee misconduct generally, and any such action shall be subject to judicial review to the extent provided by law for disciplinary action for misconduct of employees of the same category and grade.

(b) ADMINISTRATIVE ENFORCEMENT AS TO FORMER GOVERNMENT EMPLOYEES AND OTHERS.—

(1) REMEDIES AND CIVIL PENALTIES: The head of an agency, upon finding that any former employee of such agency or any other person has violated any provision of this Act, may, in addition to any other powers the head of such agency may have, bar or impose reasonable conditions upon—

(A) the appearance before such agency of such former employee or other person, and

(B) the conduct of, or negotiation or competition for, business with such agency by such former employee or other person, for such period of time as may reasonably be necessary or appropriate to effectuate the purposes of this Act.

(2) PROCEDURE.—

(A) HEARINGS.—Findings of violations referred to in subsection (b)

(1) shall be made on the record after notice and hearing, conducted in accordance with the provisions governing adjudication in title 5, United States Code, secs. 1005, 1006, 1007, 1008, and 1011 (Administrative Procedure Act). For the purposes of such hearing any agency head, or any officer designated by it, is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which the agency head finds relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States at any designated place of hearing. Witnesses summoned by the agency head to appear shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(B) JUDICIAL REVIEW.—(i) Any party to a proceeding under this subsection (b) aggrieved by an order issued by the agency head pursuant hereto, may obtain a review of such order in the court of appeals of the United States for any circuit wherein said party is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court within sixty days after the order of the agency upon a written petition praying that such order be modified or set aside in whole or in part.

(ii) A copy of such petition shall forthwith be transmitted by the clerk of the court to the agency head involved, and thereupon such agency head shall file with the court the record upon which the order complained of was entered. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part.

(iii) No objection to the order of the agency head shall be considered by the court unless such objection shall have been urged before the agency or there is reasonable ground for failure to do so.

(iv) The findings of the agency head as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material in that there were reasonable grounds for failure to adduce such evidence in the proceedings before the agency, the court may order such additional evidence to be taken before the agency and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper.

(v) The agency head may modify his findings as to the facts by reason of the additional evidence so taken and shall file with the court such modified or new findings which, if supported by substantial evidence, shall be conclusive, and his recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside in whole or in part, any such order of the agency head, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 346 and 347 of title 28. The commencement of proceedings for review under this subsection shall not, unless specifically ordered by the court, operate as a stay of the agency head's order.

(c) **CIVIL REMEDY FOR DAMAGES AGAINST EMPLOYEES AND FORMER EMPLOYEES.**—The Attorney General of the United States may bring a civil action in any district court of the United States against any Government employee or former Government employee who shall, to his economic advantage, have acted in violation of this Act, and in such action may recover on behalf of the United States, in partial reimbursement of the United States for its expenses of administering this Act, damages in an amount equal to three times the amount of such economic advantage.

(d) **PUBLICATION OF CERTAIN FINDINGS AND DECISIONS.**—Whenever the head of any agency, or the President, exercises the authority conferred by subsections (a) or (b), of this section, copies of the findings and decision therein shall be filed with the President and shall be published at least once each year as part of a volume collecting such findings and opinions. Such volumes shall be made available for public inspection and shall also be made available for distribution or sale to interested persons.

(e) **INTERESTS OF NATIONAL SECURITY.**—When any provision of this Act requires publication of information and the President finds that publication of part or all of such information is inconsistent with national security, he may suspend the requirement of such publication to the extent and for such period of time as he shall deem essential for reasons of national security.

(f) **STATUTE OF LIMITATIONS.**—No administrative or other action under subsections (b) or (c) of this section to enforce any provision of this Act shall be commenced after the expiration of six years following the occurrence of the alleged violation.

§ 403. Civil and criminal remedies

Nothing in sections 401 or 402 of this Act shall be construed to authorize or make lawful anything prohibited or made illegal by sections 201, 203, 205, 207, 209, or 301 of this Act nor to exempt any person from the penal provisions thereof.

[H.R. 8140, 87th Cong., 2d sess.]

AMENDMENT Intended to be proposed by Mr. Keating (for himself and Mr. Javits) to the bill (H.R. 8140) to strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes, viz: On page 21, line 19, insert the following:

§ 301. Communications to agency

Whenever any matter is pending before any agency for adjudication, and any communication with respect to the status, disposition, or merits thereof is received by such agency from any Member of Congress, the agency shall make such communication, or a true and correct copy thereof, together with a true and correct copy of any response made thereto by the agency, a part of the public record of such adjudicatory proceeding. The true and correct substance of any oral communication received by any agency from any Member of Congress, and the true and correct substance of any oral response made by any agency to any communication received from any Member of Congress, with respect to the status, disposition, or merits of any such adjudicatory matter, shall be reduced to writing by any member, officer, or employee thereof who receives such communication or responds thereto, and such writing shall be treated as a written communication received by any agency, or a written response made by the agency thereto, as the case may be; and, in addition thereto, a copy thereof shall be sent to the Member of Congress concerned. As used in this subsection—

(1) The term "agency" includes any member, officer, or employee of any agency; and

(2) The term "Member of Congress" includes (A) any Delegate to Congress or Resident Commissioner in Congress, (B) any employee of any Member of Congress, Delegate to Congress, or Resident Commissioner in Congress, and (C) any employee of any joint committee of the Congress or any committee of either House of the Congress.

[H.R. 8140, 87th Cong., 2d sess.]

AMENDMENT Intended to be proposed by Mr. Keating (for himself and Mr. Javits) to the bill (H.R. 8140) to strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes, viz: On page 21, line 19, insert the following:

§ 501. Policy and purpose

(a) One of the most vital concerns of a free and representative government is the maintenance of moral and ethical standards for their representatives which are above cause for reproach and warrant the confidence of the people. The people are entitled to expect from their elected representatives in the Federal Government and the employees of the legislative branch a standard above that of the marketplace, for these public servants are entrusted with the welfare of the Nation. Yet these standards must be practical and should be fairly representative of the people who elect their representatives. Some conflicts of interest are clearly wrong and should be proscribed by sanctions in the criminal law; however, many are composed of such diverse circumstances, events, and intangible and indirect concerns that only the individual conscience can serve as a practical guide. But there are many possibilities of conflict in that shadowland of conduct for which guidance would be useful and healthy, but for which the criminal law is neither suited nor suitable. Therefore, the Congress finds that a Code of Ethics is desirable for the guidance and protection of its Members and the officers and employees of the legislative branch of Government, establishing the standards of conduct reasonably to be expected of them.

(b) It is also the purpose of this resolution to provide for a thorough study and investigation to determine necessary and desirable changes in existing conflicts of interest statutes applying to Members of Congress and to officers and employees of the legislative branch, and to develop a comprehensive Code of Ethics for the guidance of such Members, officers, and employees, by which the purposes of this resolution may be more fully assured in the conduct of the public business in the legislative branch.

§ 502. Establishment of Joint Committee on Ethics

(a) There is hereby established a joint congressional committee to be known as the Joint Committee on Ethics (hereinafter referred to as the joint committee).

(b) The joint committee shall be composed of seven Members of the Senate, appointed by the President of the Senate, and seven Members of the House of Representatives, appointed by the Speaker of the House of Representatives.

§ 503. Powers and duties

(a) It shall be the duty of the joint committee to undertake a thorough study and investigation of the ways and means by which the policy objectives set forth in section 1 of this resolution can further be assured. In the conduct of such study and investigation the joint committee shall, among other things, determine to what extent existing conflict-of-interest laws or regulations applicable to the legislative branch should be strengthened and it shall recommend a comprehensive Code of Ethics in the formulation of which it shall have considered the following subjects:

(1) Outside employment or professional or business activity by Members of Congress or officers or employees of the legislative branch;

(2) Disclosure by Members of Congress or officers or employees of the legislative branch of confidential information acquired in the course of official duties or the use thereof for personal advantage;

(3) Use of their official position by Members of Congress or officers or employees of the legislative branch to secure unwarranted privileges or exemptions for themselves or others;

(4) Dealing by Members of Congress or officers or employees of the legislative branch in their official capacities with matters in which they have a substantial pecuniary interest;

(5) Conduct by Members of Congress or officers or employees of the legislative branch which gives reasonable cause for public suspicion of violation of public trust; and

(6) Other matters concerning official propriety and the integrity of the public service as it relates to Members of Congress, officers or employees of the legislative branch.

(b) The joint committee shall report to the Senate and the House of Representatives the result of its investigations together with such recommendations for the establishment of a Code of Ethics covering the legislative branch as it may deem advisable. Such report shall be submitted no later than June 30, 1963, and the committee shall cease to exist thirty days after the submission of its final report.

(c) Vacancies in the membership of the joint committee shall not affect the power of the remaining members to execute the functions of the joint committee, and shall be filled in the same manner as in the case of the original selection. The joint committee shall select a chairman and a vice chairman from among its members.

§ 504. Hearings, subpoenas, disbursements, employees

(a) The joint committee, or any subcommittee thereof, shall have power to hold hearings and to sit and act at such places and times, to require by subpoena or otherwise the attendance of such witnesses and the production of such books, papers, and documents, to administer such oaths, to take such testimony, and to make such expenditures, as it deems advisable. Subpoenas shall be issued under the signature of the chairman of said joint committee, and shall be served by any person designated by him. Amounts appropriated for the expenses of the joint committee shall be disbursed one-half by the Secretary of the Senate and one-half by the Clerk of the House.

(b) The joint committee shall have the power to employ and fix the compensation of such experts, consultants, and clerical and stenographic assistants, to procure such printing and binding, and to make such expenditures, as it deems necessary and advisable, subject to the limitations of its appropriations. The joint committee is authorized to utilize the services, information, and facilities of such departments and other agencies of the Government as it may deem appropriate.

§ 505. Limitation of joint committee's powers

The joint committee shall have no power of enforcement with respect to any Members of Congress or officer or employee of the legislative branch, and such power is reserved with respect to its Members, officers, or employees to each House or to any committee thereof which has been designated to carry out such functions.

§ 506. Interim code of ethics

For the purposes of guidance for Members of Congress and officers and employees of the legislative branch during the period during which the joint committee is considering the provisions of an appropriate Code of Ethics for Members of Congress and officers or employees of the legislative branch, the Congress hereby adopts the following standards as a guide to such Members, officers, or employees:

(a) No Member of Congress, or officer or employee of the legislative branch, should have any interest, financial or otherwise, direct or indirect or engage in any business, transaction, or professional activity or incur any obligation of any nature whether financial or moral, which is in substantial conflict with the proper discharge of his duties in the public interest; nor should any Member of Congress, officer or employee of the legislative branch give substantial and reasonable cause to the public to believe that he is acting in breach of his public trust.

(b) In addition to the general rule set forth in paragraph (a), the following standards are applied to certain specified transactions:

(1) No Member of Congress, or officer or employee of the legislative branch of the Government should accept other employment which will tend to impair his independence of judgment in the exercise of his official duties.

(2) No Member of Congress, or officer or employee of the legislative branch of the Government should accept employment or engage in any business or professional activity which will tend to involve his disclosure or use of confidential information which he has gained by reason of his official position or authority.

(3) No Member of Congress, or officer or employee of the legislative branch of the Government, should disclose confidential information acquired by him in the course of his official duties or use such information for other than official purposes.

(4) No Member of Congress, or officer or employee of the legislative branch of the Government, should use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.

(5) A Member of Congress, or officer or employee of the legislative branch of the Government should not by his conduct give reasonable cause for belief that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position, or influence of any person or political party.

(6) A Member of Congress, or officer or employee of the legislative branch of the Government should endeavor to pursue a course of conduct which will not give reasonable cause for belief that he is likely to violate his trust.

(7) Any Member of Congress, or officer or employee of the legislative branch of the Government, having a financial interest, direct or indirect, having a value of \$10,000 or more, in any activity which is subject to the jurisdiction of a regulatory agency, should file with the Comptroller General a statement setting forth the nature of such interest in such reasonable detail, and in accordance with such regulations as shall be prescribed by the Comptroller General. As used herein, the term "regulatory agency" shall include such agencies as shall be designated by the Comptroller General, which list shall be published in the Federal Register as soon as practicable.

§ 507.

Paragraph (o) of subsection 1 of rule XXV of the Standing Rules of the Senate is hereby amended by adding at the end thereof a new subparagraph to be subparagraph (3) to read as follows:

"(3) Such committee shall also have the duty to consider all matters arising in connection with the application of any code of ethics applicable to Members, officers, or employees of the Senate. The committee shall receive complaints of any violation of such code and may, upon request of any Senator, officer, or employee, give an advisory opinion to the Senator, officer, or employee involved on the conformity of any proposed conduct with any such code."

[H.R. 8140, 87th Cong., 2d sess.]

AMENDMENT Intended to be proposed by Mr. Keating (for himself and Mr. Javits) to the bill (H.R. 8140) to strengthen the criminal laws relating to bribery, graft, and conflict of interest, and for other purposes, viz: On page 21, line 19, insert the following:

§ 301. Gifts

(a) GENERAL RULE FOR ALL EMPLOYEES.—No Government employee shall receive, accept, take, seek, or solicit, directly or indirectly, any thing of economic value as a gift gratuity, or favor from any person if such Government employee has reason to believe the donor would not give the gift, gratuity, or favor but for such employees' office or position within the Government.

(b) ADDITIONAL GENERAL RULE FOR REGULAR EMPLOYEE.—No regular Government employee shall receive, accept, take, seek, or solicit, directly or indirectly, any thing of economic value as a gift, gratuity, or favor from any person, or from any officer or director of such person, if such regular Government employee has reason to believe such person—

(1) has or is seeking to obtain contractual or other business or financial relationships with such employee's agency; or

(2) conducts operations or activities which are regulated by such employee's agency; or

(3) has interests which may be substantially affected by such employee's performance or nonperformance of official duty.

Senator JOHNSTON. Senator Wiley, do you wish to make a statement?

Senator WILEY. I have no statement at this time.

Senator JOHNSTON. We will proceed then with Mr. Katzenbach.

You may proceed just as you see fit.

You might identify those with you at the head table so we will know who they are for the record.

STATEMENT OF NICHOLAS deB. KATZENBACH, DEPUTY ATTORNEY GENERAL, ACCOMPANIED BY SOL LINDENBAUM AND DAVID C. STEPHENSON, ATTORNEYS, OFFICE OF LEGAL COUNSEL, DEPARTMENT OF JUSTICE

Mr. KATZENBACH. Thank you, Mr. Chairman.

I have here on my right Mr. Sol Lindenbaum, and on my left Mr. David Stephenson, both from the Office of Legal Counsel. Both of these gentlemen participated in the drafting of the bill submitted and have been following this, and I asked them to be with me today.

Senator JOHNSTON. We are glad to have you and those with you this morning.

Mr. KATZENBACH. I have a prepared statement here, Mr. Chairman, which, with your permission, I think I would like to read. It is somewhat long and I think it will take me about 20 minutes, but I think it gives a good description of the bill.

Senator JOHNSTON. Proceed. Would you rather read it first without any interruptions and then have questions afterward, if anyone has any questions?

You may proceed any way you wish.

Mr. KATZENBACH. I certainly have no objection to any questions anyone may wish to ask at any time.

Senator JOHNSTON. Proceed.

Mr. KATZENBACH. I very much appreciate the opportunity to appear before you today to testify on behalf of the administration with regard to H.R. 8140.

This bill deals with two subjects: conflicts of interest and bribery, both of which are treated in the Criminal Code of the United States. The main purpose of the bill is to revise the current penal statutes dealing with conflicts of interest, and I will discuss that aspect of the pending legislation first.

A substantial part of the impetus for the enactment of this bill derives from the special message which the President transmitted to the Congress on April 27, 1961, dealing with conflicts of interest and ethical behavior on the part of officers and employees of the Government. The President transmitted at the same time a draft of a comprehensive bill to accomplish the legislative recommendations of the message. The most important elements of the draft bill are incorporated in the bill before you, which was passed by the House of Representatives last August with virtually no opposition.

The President's interest and actions in relation to conflicts-of-interest problems and standards of ethical behavior form a background to H.R. 8140 which it will be useful to present. In the first days of his administration he appointed an Advisory Panel on Ethics and Conflict of Interest in Government and asked it to give special attention to the adequacy of the conflict-of-interest laws currently in force. The Panel submitted a report making recommendations for the revisions of these laws which the President followed in large part in the proposed legislation accompanying his special message to Congress.

I might add that Panel was under the chairmanship of retired Judge Calvert Magruder, and included two other members, Prof. Bayless Manning of the Yale Law School and Prof. Jefferson Fordham of the University of Pennsylvania Law School.

The administration's bill reflected as well, the studies and recommendations made through the years by various congressional committees, executive agencies, and members of the bar. It is noteworthy that all of these groups, while approving the underlying principles of the existing statutes, had arrived at the conclusion that they are in need of clarification and in certain aspects are outmoded.

In accordance with a statement he had made in his special message, the President, on May 5, 1961, issued Executive Order 10939 prescribing rules of ethical conduct applicable to heads and assistant heads of departments and agencies and members of the White House staff. The order also directed the head of each department or agency to set similar standards of conduct for the personnel in his organization, and the White House thereafter acted to coordinate the review and revision of agency regulations for this purpose.

Late in 1961 it became apparent that the uncertainties of the conflict-of-interest laws as applied to intermittent consultants and advisers and members of part-time advisory boards were causing widespread apprehension among individuals serving the Government in these capacities. It appeared also that these uncertainties had resulted in considerable diversity of regulations and practice among the agencies. In the interest of arriving at more uniform standards by executive regulation, the President obtained from the Attorney General an opinion, dated January 31, 1962, setting forth guidelines for such standards under present law. On February 9, 1962, the President issued a memorandum to the departments and agencies prescribing detailed regulations and administrative practices designed to prevent conflicts of interest on the part of advisers and consultants.

Finally, on February 26, 1962, the President issued Executive Order 11007 prescribing regulations for the formation and use of advisory committees. This order also reflects a desire for uniform standards and, moreover, reflects a determination that advisory committees shall function at all times in consonance with the conflict-of-interest laws and, I might add, the antitrust laws.

This concern and action on the part of the President which I have summarized, testify, far more effectively than I can testify here today, to the continuous importance of the subject with which H.R. 8140 deals, and in part they reflect the need for the revision of law which the bill would accomplish.

Before passing on to the specific provisions of H.R. 8140, I believe it will be helpful to point out that one of the greatest problems arising from the conflict-of-interest laws is concerned with a matter I have already mentioned—the Government's utilization of private persons as temporary or intermittent consultants and advisers. It must be understood that most of these laws were enacted in the 19th century—that is, at a time when persons outside the Government rarely served it in any way. The laws were therefore directed at activities of regular Government employees, and their present impact on the intermittently needed employee, one who obtains his livelihood outside the Government, is unduly severe. This impact constitutes a serious deterrent to the Government's making use of the skill, talent, and experience of leaders in the sciences, business, and the professions. It can scarcely be questioned that a satisfactory means must be found of overcoming this deterrent without relaxing basic ethical standards or permitting actual conflicts of interest.

Congress has from time to time taken cognizance of the needs of an agency in this connection and met them by an ad hoc statutory exemption covering some or all of its consultants and advisers. The patchwork of these exemptions attests to the necessity for standards for these individuals which are more liberal than those for ordinary employees, but the patchwork is no recommendation for the continuation of ad hoc action. In the first place, these exemptions cannot always be obtained or obtained when needed. Furthermore, those that are granted are often inadequate, inconsistent with statutory exemptions granted elsewhere in similar circumstances, or open to abuse. The enactment of general legislation is unquestionably to be preferred and will remove the necessity for specific exemptions.

H.R. 8140 is designed to meet difficulties occasioned by existing law and the administration believes it goes a long way in that direction. However, I do not mean to say that the bill needs no changes, for I wish to recommend a number of amendments which the administration thinks proper. Most are of a minor nature, but a few are of significance. These latter recommendations stem from the careful assessment and study of the bill made by the major scientific agencies of the Government after passage by the House of Representatives. During the period the bill was before the House, neither the magnitude of the conflict-of-interest problems arising from the Government's use of scientific and technical consultants and advisers nor the magnitude of the problem of recruitment were, perhaps, fully appreciated. Indeed, it was the subsequent realization of the gravity of these problems that led, several months later, to the President's issuance of his memorandum to the departments and agencies of the Government setting out uniform regulations under present law intended to prevent conflicts of interest on the part of advisers and consultants. But difficulties remain and that of recruitment unceasingly causes a great deal of concern to the agencies of the Government and particularly those which must employ scientists and other professional personnel. It is this concern which has produced the most important of the recommendations for amendment to H.R. 8140 which I shall submit.

I believe it will be best to proceed from here by describing the main provisions of the bill relating to conflicts of interest and presenting, as I go along, any substantive amendments to those provisions which the administration proposes.

Perhaps the most significant contribution made by H.R. 8140 is the creation in section 202 of a new category of "special Government employees," as distinguished from regular, full-time employees. This new category is created to resolve the problems arising from the need for and use of advisers and consultants and is composed of those persons employed by the Government agencies to serve temporarily or intermittently no more than a total of 130 days in any period of 365 days. As will be seen, the restraints imposed by the bill on these persons in respect to their activities in private capacities are for the most part not as stringent as those brought to bear on similar activities of regular employees.

It may be noted at this point that the bill applies generally to officers of the Armed Forces on active duty but treats a Reserve or National Guard officer as a special Government employee unless he is

serving a period of extended active duty in excess of 130 days. However, the bill makes no distinction between Reserve and National Guard officers involuntarily called to duty for a period of more than 130 days and those serving in excess of 130 days voluntarily. During the preliminary consideration of H.R. 8140 by this committee at the end of last August, Senator Ervin and Senator Hruska, having in mind the orders to active duty for 1 year then being issued, objected to making the recalled officers subject to the full extent of the restrictions imposed on regular Government employees. The administration concurs in this position and deems it desirable to classify Reserve and National Guard officers as special Government employees during all periods of involuntary service, regardless of length. An amendment of the bill for this purpose is set forth and marked No. 1 in the appendix attached to this statement.

Present law (18 U.S.C. 281) prohibits Members of Congress and officers or employees of the Government from receiving compensation for services rendered for others before a Federal department or agency in a matter in which the Government is a party or is interested. Section 203 of the bill continues this prohibition in full effect except as applied to a special Government employee. The latter would be subject to it only with respect to services rendered (1) in a matter in which he has participated as a Government employee personally and substantially, (2) in a matter which within 2 years has been a subject of his official responsibility, or (3) in a matter pending in the agency he serves. However, the third restriction would not be applicable if the special Government employee serves 15 days or less during a period of a year.

The scientific agencies of the Government are uniformly of the view that the second and third restrictions which are placed on a special Government employee by section 203 are unnecessary. In general these agencies take the position that the interests of the Government are adequately guarded by the first restriction—that is, the ban on the appearance of a special Government employee before any agency, in a private representative capacity, in those matters in which he has engaged personally. They note in particular that the other restrictions are aimed not at true conflicts of interest but at the use of any influence or inside information a special Government employee may obtain in his agency, and they believe they can deal with this matter more effectively through administrative regulation. In addition, these agencies point out that the knowledge, experience and skills which an agency may require on an intermittent or temporary basis are often to be found only among individuals whose principal employment necessarily brings them to the same agency on other occasions in behalf of private businesses or other nongovernmental organizations. The agencies fear that section 203 as presently drafted will in many cases prevent or completely discourage these individuals from accepting Government consultancies and in other cases unduly hamper the consultancies they accept.

The administration believes that these arguments and fears are in general well grounded but it recognizes that the influence factor should not be completely ignored. Accordingly, it has determined to recommend the omission of the second limitation described above, that is, the limitation imposing a bar in respect of matters which within

2 years have been subject to a special Government employee's official responsibility, but to recommend, with an amendment, the retention of the third limitation, which affects appearances before the employing agency. The proposed amendment would change from 15 days to 60 days the maximum amount of service to the agency which a special Government employee may perform during a period of a year without bringing the third limitation into play. I believe that this amendment, which appears as No. 2 in the attached appendix, draws a satisfactory line at which to invoke an "antiinfluence" prohibition and at the same time will permit the recruitment of a great majority of the intermittent consultants and advisers the Government needs. I wish to emphasize that there will necessarily have to be close administrative regulation of this provision. The rule now imposed by the President that intermittent consultants and advisers furnish their employing agencies with statements of their financial interests will be maintained. As is true now, an annual examination of the role and need for each such individual in the agency will be required. And, in general, there will be Executive insistence on constant agency scrutiny of the appearances of these individuals on behalf of non-Government enterprises and organizations.

The next section of the bill, section 204, is taken without change from an existing statute which prohibits Members of Congress from practice in the Court of Claims.

Section 205 stems from an existing statute (18 U.S.C. 283) which applies to employees of the departments, agencies, Senate and House of Representatives and prohibits them from acting, with or without compensation, as agent or attorney for prosecuting a claim against the United States otherwise than in the discharge of official duties. The phrase "claim against the United States" has been judicially construed to include only a claim for money or property, with the result that a great variety of proceedings before the agencies and the courts fall outside the prohibition of this statute. Section 205 of the bill remedies this result by extending the prohibition against a Government employee's acting as agent or attorney for another to the entire range of matters in which the United States is a party or has an interest.

This section of the bill provides for the same limited impact on a special Government employee as does section 203. In other words, it prevents him from acting as attorney or agent only in matters in which he has participated personally and substantially, in matters which, within 2 years, have been the subject of his official responsibility, and, if he serves in excess of 15 days in any period of a year, in matters pending before his agency. The same criticism of the last two of these provisions has been voiced as I described earlier in connection with the parallel provisions of section 203. The administration recommends the same amendment here as in that section (No. 2 in the appendix).

Section 206 provides that sections 203 and 205 do not apply to retired officers of the Armed Forces. The combined effect of this section and of the exception at page 20, lines 22-24, of the bill is to leave the present status of retired officers unchanged.

There are presently two statutes concerned with conflicts of interest which apply to persons who leave Government service. 18 U.S.C.

284 prohibits a former Government employee, for a period of 2 years after his employment has ceased, from prosecuting a claim against the United States involving any subject matter with which he was directly connected; 5 U.S.C. 99, which contains no criminal penalties, prohibits a former employee of an executive department, for a similar period of 2 years, from prosecuting any claim pending in any department during his incumbency.

Section 207 of the bill replaces these two statutes. Subsection (a) provides for a permanent bar against a former Government employee acting as agent or attorney in any matter in which the United States is a party or is interested and in which he had participated personally and substantially while in the Government. This lifetime bar, which applies equally to special and regular Government employees, is clearly justified in the matters to which it pertains, since there is simply no reason to permit "switching sides" against the Government in those matters after 2 years or 20 years or at any other time. I should mention also that section 207(a) is concerned not only with claims for money or property, to which the present laws have been limited by judicial decision, but covers the same wide range of proceedings I noted in my discussion of section 205.

Section 207(b) imposes a new 2-year prohibition affecting a former Government employee, whether regular or special. The prohibition would bar him for that period from appearing before a Government agency as agent or attorney for another in connection with a matter which was under his official responsibility at any time within 2 years prior to his leaving the Government. The bar would apply, thus, in cases where he had not actually participated in a matter. As pointed out in the discussion of the applicability of section 203 to special Government employees, a provision of this nature is essentially concerned with preventing the use of influence rather than preventing conflicts of interest. The scientific agencies and others believe that the enactment of this provision will certainly and adversely affect their recruitment of topflight personnel for regular service, particularly in the higher ranking supervisory positions, and their recruitment of intermittent personnel for work in broad areas of agency endeavor. They urge the elimination of the provision.

The administration is in accord with the view of these agencies and believes that the lifetime prohibition in section 207(a), together with strict administrative regulation, will afford the Government ample insurance against unscrupulous conduct on the part of former employees. The administration therefore recommends the omission of section 207(b).

Section 207(c), which is aimed primarily at lawyers, would preclude a partner of a former Government employee for 2 years from handling any matter before the Government in which the former employee is permanently barred by section 207(a). The basis for this prohibition, which has no counterpart in the statutes presently on the books, is the imputation of one partner's disability to another. However, section 207(c) seems to go too far and in some cases might make it difficult for an individual with specialized experience to leave the Government and enter into private activity in his field. As far as former Government lawyers in particular are concerned, the ban against venal conduct imposed by canon 36 of the canons of ethics would seem to afford sufficient protection to the Government. The

administration recommends the omission of section 207(c) and the enactment of the minor conforming amendments marked No. 3 in the appendix.

Section 207(d) prevents an individual who has a partner in Government service from engaging in matters which are or have been handled by that partner for the Government or which are the subject of his official responsibility. There would appear to be no question concerning the aptness of this provision.

Section 208 is the counterpart of the present 18 U.S.C. 434 which prohibits an employee of the Government who is interested in the profits or contracts of any business entity from acting for the Government in the transaction of business with that entity. However, section 208 reaches further than the "transaction of business" and proscribes any personal participation in a matter in which the employee may have an outside financial interest. It also expands existing law by triggering his disqualification if his spouse, child, or persons with whom he has business connections have an interest in a matter coming before him. Disqualification caused by insignificant interests may be waived by the employee's superiors.

The question has arisen whether the interest of a child who has attained his majority would disqualify his parent under this section. It is my understanding that this result would ensue only in the case of a minor child. The committee may wish to insert the word "minor" in section 208 to clarify this point.

Section 209 in effect reenacts present law (18 U.S.C. 1914) forbidding a Government employee from receiving any compensation from a private source for his services to the Government. However, special Government employees and persons serving without compensation are exempted from the prohibition. In addition, the section clarifies existing law by specifying that a Government employee may continue to participate in a bona fide pension or other welfare plan maintained by a former employer.

Section 218, which has no parallel in the present statutes, authorizes the President to void and rescind any transaction with the United States where a conflict of interest has been discovered and a person convicted under the conflict-of-interest or bribery laws. It also provides that the United States shall be entitled in these cases to recover, in addition to any penalty prescribed by law or in a contract, the amount expended or thing transferred on behalf of the Government. Since the section authorizes these actions "in addition to any other remedies provided by law," I do not believe it has the effect of modifying the decision of the Supreme Court in the Dixon-Yates matter (*United States v. Mississippi Valley Generating Co.*, 364 U.S. 520 (1961)).

Turning now briefly to section 201 of H.R. 8140, which relates to bribery, I wish to mention first that it is a substitute for several existing statutes now dealing with that subject and constitutes a single comprehensive statute applicable to all persons performing activities for or on behalf of the United States. It applies, most importantly, to public officials of all kinds and witnesses at trials, congressional hearings, and agency proceedings. I might add that it is not intended to limit in any way the broad sweep that the courts have heretofore given to the bribery statutes. And to some extent it expands present

law by forbidding an attempt to influence a public official by an offer or promise of something of value from which he, himself, will not gain but which will be to the advantage of someone else in whose well-being he is interested.

I hope that this recital of the more important provisions of H.R. 8140 and of the more important of the administration's recommendations for amendment will prove to be of value to you in your study of the bill. In addition to the proposed amendments I have described to you, the administration suggests a few minor clarifying and perfecting amendments. They are set forth, with explanations, in the appendix to this statement, where they are numbered 4 through 8, and I shall not take the time to discuss them now.

Let me observe, in ending my statement, that, as far as I know, no one disputes the need for revising the conflict-of-interest laws. Through the years, a great deal of study has taken place both in and out of Government with a view to formulating apt revisions. The bill before you represents the fruits of that study. It is a bill on which experts in the field have collaborated and which has their support. The administration, which submitted a bill of its own last year, believes that this bill carries out the objectives of its own proposals. The amendments it proposes are proffered for the purpose of improvement. The administration urges that you act favorably on them and on the bill.

Senator JOHNSTON. Do you have any questions, Senator Keating?

Senator KEATING. Yes, I would like to ask some questions, Mr. Chairman.

Mr. Katzenbach, you heard my opening statement?

Mr. KATZENBACH. Yes, sir.

Senator KEATING. The President in his message that you refer to, on April 27, 1961, recommended a dual approach to the enforcement of the conflict of interest laws, pointing out that it was often difficult to convict in criminal cases. In some cases it is somewhat of a stretch of the facts to really find a person had a criminal intent and therefore the President recommended, that there be some administrative procedure enacted to deal with conflict problems. Would you comment on that? Is that still the position of the administration? My first amendment to which I referred seeks to write into this bill something along those lines. I do not know that you have had an opportunity to see the phraseology of it?

Mr. KATZENBACH. I have not gone over the exact phraseology, but I could speak to the substance of it, Senator.

We do believe, as I have emphasized in my statement, that it is necessary to take action by administration regulation throughout this field. I simply do not believe the problems are soluble entirely in terms of criminal statutes.

We have taken such action in this administration, the action I refer to in my statement, and we would propose to continue to do that. I think we have the authority now to regulate Government employees and to discharge them for violation of executive memorandums or regulations issued by a department or agency of the Government in this field. I certainly have no objection to a provision in the law that authorizes that. I think it is unnecessary to authorize it since I think legally we presently have the power.

Indeed, the President has gone further and said, and in fact has effected coordination through members of the White House staff with respect to all agencies and departments so the regulations would be consistent in terms of their policy and effect.

Senator KEATING. You may be right, but apparently in April of 1961 the President felt that there was a need for legislation in this field and that the existing powers of administrative action were not sufficient. I would like to submit to you for your review these proposed amendments to get your idea as to whether you feel they would in any way help or hurt the legislation before us. I have the feeling that something along these lines is necessary.

Mr. KATZENBACH. I would be happy to do that, Senator.

I would like to make one more comment on that that might be of interest to you, Senator. The original administration bill did have a provision in this respect. This was eliminated in the House for two reasons. One is the one I have already given; they felt it was unnecessary. The second reason is that the format of the legislation was changed to adapt to title 18 of the code which is the criminal title, and therefore it became awkward simply in terms of the approach that was taken to include that within that particular form. I do not believe these problems are insoluble, but those are the reasons for it.

Senator KEATING. I would like to have your views as to the substance of the amendment. There have been other instances in congressional history, indeed as late as this session, where the Senate and the House have found themselves not in complete agreement, and it might be that this committee would feel it would be appropriate to include something along these lines even though the House committee did not.

Anyway, if I may, I would like to submit them to you for your views so that we can have your advice on whether the phraseology is proper if we desire to take such action in this committee.

Senator JOHNSTON. We will be glad to have those questions and to have the answers.

Senator KEATING. We can perhaps ask the Deputy Attorney General to just give us a letter for the record with regard to these amendments.

Senator JOHNSTON. That will be fine.

Mr. KATZENBACH. We will be happy to do so, sir.

(The information referred to follows:)

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., July 23, 1962.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR SENATOR EASTLAND: During the Judiciary Committee hearings on H.R. 8140 on June 21, 1962, a number of questions were raised by members of the committee upon which written comments were requested or which required study and consideration. This letter is addressed to these questions. Specifically, comment is directed to (1) the amendments proposed by Senator Keating, (2) the suggestion by Senator Johnston that a savings clause might be needed in the bill with respect to offenses committed under present laws prior to enactment of H.R. 8140, which would repeal these laws, and (3) the question raised by Senator Hruska as the effect of the bill on part-time U.S. Commissioners. There is also included comment upon certain of the recommendations of the Association of the Bar of the City of New York and of witnesses representing retired officers.

The amendments proposed by Senator Keating would (1) incorporate in the bill a system of administrative and civil enforcement of the conflict-of-interest laws, (2) provide for the disclosure of certain ex parte communications received by Government agencies from Members of Congress or congressional staff members, (3) create a committee on ethics in Congress and establish a code of ethics for Members of Congress and employees of the legislative branch, and (4) prohibit gifts to Federal employees in certain circumstances. The third amendment is a matter which concerns the Congress exclusively, and, I would, therefore, prefer to make no comment with respect to it.

The second amendment, dealing with ex parte communications, concerns a subject upon which the Administrative Conference of the United States made recommendations on June 29, 1962. The conference took the position that standards of conduct governing ex parte communications should be developed by each agency in accordance with general guidelines which the conference adopted, rather than by legislation applicable to all agencies. This approach seems to be reasonable in view of the differing responsibilities and activities of each agency and is in essence the approach taken by the President in his message to the Congress of April 27, 1961, on conflicts of interest. Since the recommendations of the conference relate to ex parte communications generally, it appears unnecessary to single out communications originating in the legislative branch for statutory regulation. Consequently, we do not believe Senator Keating's amendment dealing with ex parte communications should be adopted.

Senator Keating's proposal relating to gifts would prohibit a Government employee, whether regular or intermittent, from receiving "any thing of economic value" as a gift from any person if he has reason to believe the donor would not give the gift but for the employee's official position. Subsection (a). A regular Government employee would be barred from receiving any thing of economic value as a gift from any person if the employee has reason to believe such person does business with the employee's agency, is regulated by it, or may be substantially affected by the employee's performance of duty. Subsection (b). The section contains no criminal penalties.

Although Federal law contains some statutory prohibitions relating to gifts, they are miscellaneous provisions operating in limited areas, e.g., 5 U.S.C. 113 (prohibition of presents to superiors) and 5 U.S.C. 174d (termination of contracts because of gifts by Department of Defense contractors to Government employees). General prohibitions restricting the receipt of gifts from private sources at the present time are principally a matter of individual agency regulation. A White House memorandum of July 20, 1961, to the heads of all departments and agencies, laid down minimum standards for the guidance of the latter in promulgating regulations for the conduct of employees, including a prohibition against the acceptance of gifts which is substantially similar to subsection (b) of Senator Keating's amendment. Executive Order 10939 of May 5, 1961, in addition, prohibits heads and assistant heads of departments and agencies, full-time members of boards and commissions appointed by the President, and members of the White House staff from accepting gifts in prescribed circumstances. The President's memorandum of February 9, 1961, to the heads of the executive departments and agencies, setting forth rules designed to prevent conflicts of interest on the part of consultants and advisers to the Government, contains a similar prohibition in respect of the acceptance of gifts by the latter.

In view of the steps taken by the administration to guard against the acceptance of improper gifts by Government employees, the proposed gifts section does not appear to be necessary. However, the administration would not object to its inclusion in the bill.

If the gifts section is to be included in H.R. 8140, the term "Government employee" and "regular Government employee" should be changed to conform to the language of H.R. 8140. It is suggested that the term "Government employee" be changed to "officer or employee of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States, including the District of Columbia." The term "regular Government employee" should be changed to "officer or employee of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States, including the District of Columbia, other than a special Government employee, as defined in section 202." Section 202(a) (definition) should be amended to include in the first sentence thereof a reference to the gifts section.

Senator Keating's amendments regarding administrative measures are embodied in the proposed sections 401 and 402. Section 401 would authorize an agency head to require employees to sign a statement that they have read a summary of the conflict-of-interest rules and regulations and to report their non-Government employment.

Under section 402(a) the head of an agency would have broad disciplinary authority, including the power of dismissal, for violations of the act or regulations thereunder. Under section 402(b) the agency head would have authority to impose restrictions upon the appearance before the agency of former employees or other persons who have violated the act or to restrict their dealings with the agency. Provision would be made for hearings and judicial review. Section 402(c) would authorize the Attorney General to bring a civil action in a district court to recover triple damages against Government employees and former Government employees who make economic gain from violations of the conflict-of-interest laws. Other subsections would provide for publication of findings and decisions under section 402, except when inconsistent with national security, and would provide a 6-year statute of limitations.

Section 402 is excerpted from S. 603, 87th Congress, introduced by Senator Javits (for himself and Senator Keating), which applies only to the executive branch and which adopts basically a different approach to the problem of conflicts of interest than does H.R. 8140. The latter, in its present form, constitutes almost wholly an amendment to title 18, the Criminal Code, and affects, in part, Members of Congress, as well as Government employees. Thus, problems of integrating section 402 into the fabric of H.R. 8140 arise. For example, if section 402 is to be incorporated in H.R. 8140, the following terms will require definition: "Government employee" and "agency." Both these terms are defined in section 2 of S. 603, but it is not clear whether the same meanings are intended in section 402.

Although the administration believes that section 402 is unnecessary because the agencies possess the power to make comparable regulations, it would not object to some provision relating to administrative or civil remedies. However, it is our view that section 402 is too elaborate and does not fit into the scheme of H.R. 8140. A more suitable provision, it seems to us, is the section proposed by Roswell B. Perkins in his testimony before the committee on behalf of the Association of the Bar of the City of New York. This section would impose upon the President and agency heads the duty of issuing regulations necessary or appropriate to carry out the purposes of the act. The section would make each agency head responsible for administration and enforcement within his agency of the act and regulations thereunder, and would give him power to take appropriate disciplinary action, including suspension. Procedures, including judicial review, would correspond to those applicable for disciplinary action generally. Agency heads would be authorized to require the filing of appropriate statements, reports, and certifications by employees and persons appearing before or dealing with the agency.

In summary, the administration would not be opposed in principle to the amendments which Senator Keating has proposed relating to gifts and to administrative and civil remedies although we are of the view that they are unnecessary. If the Judiciary Committee determines that provisions of this nature should be included, attention should be given to clarifying the amendments as indicated herein and consideration also should be given to Mr. Perkins' proposal as an alternative to Senator Keating's amendment on administrative and civil remedies.

Senator Johnston expressed concern that H.R. 8140 does not contain a savings clause preserving the Government's right of prosecution, under the statutes it would repeal, with respect to offenses committed prior to the enactment of the bill. It is my opinion that it is unnecessary to include a specific savings clause in H.R. 8140 because section 109 of title 1, United States Code, would accomplish the same purpose. Section 109 provides:

"The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability * * *."

The question raised by Senator Hruska as to whether part-time U.S. commissioners should be subject to the bill should be considered in connection with the letter to Senator Eastland of June 15, 1962, from Judge William F. Smith, chairman, Committee on the Administration of Criminal Law, Judicial

Conference of the United States. This letter states that the members of the Judicial Conference, at their March 1962 meeting, recommended disapproval of section 205 of the proposed legislation, but only in its application to part-time U.S. commissioners.

It has been and continues to be the position of the administration that the legislative and judicial branches of the Government should determine for themselves the extent to which the conflict-of-interest laws should apply to each. We would have no objection, therefore, to excepting part-time U.S. commissioners from H.R. 8140 to whatever extent the committee considers desirable. Part-time commissioners could be included within the definition of "special Government employee" by including the phrase "or a part-time United States commissioner," following "Columbia," in line 15, page 7 of the bill. This would have the effect of limiting the application of sections 203, 205, 207, 208, and 209 to part-time U.S. commissioners to the same extent as those sections affect "special Government employees," as defined in section 202. A second alternative would be to except part-time U.S. commissioners specifically from section 205. This could be done by adding "(except part-time United States commissioners)" after "Government" on line 6, page 11, of the bill. Another alternative would be to include part-time commissioners within the definition of "special Government employee" on page 7 but not subject them to the 130-day limitation. This could be accomplished by eliminating the period after "basis" in line 20, page 7, substituting a comma, and adding immediately thereafter "or a part-time United States commissioner."

The Association of the Bar of the City of New York recommended that the word "business" in line 5 on page 17 (in sec. 208) be eliminated on the ground that self-dealing in connection with nonprofit corporations is objectionable. The administration concurs in this recommendation in order to remove the basis for an argument that the term "business organization" does not include an organization of this nature.

The statement made at the hearings by the spokesman for the Commissioned Officers Association, Public Health Service, and the Association of Commissioned Officers, Coast and Geodetic Survey, recommended that the term "uniformed services" be substituted for "Armed Forces," as used in section 206 of the bill. The Retired Officers Association concurred in this recommendation. The administration does not object to this proposed amendment.

I trust that these comments will be of service to you and your committee.

Sincerely yours,

NICHOLAS DEB. KATZENBACH,
Deputy Attorney General.

Senator KEATING. The other matter that I would be happy to have your comment on, and it was also the subject of discussion in the President's message of April 27 of 1961, is ex parte communications to agencies by Members of Congress.

Members of Congress have been criticized for seeking to influence agencies. I can only speak for myself. I do not think it is proper to try to influence the decision of a quasi-judicial agency. However, I think it is proper to make certain communications with agencies, and it is important to Members of Congress to have the guidelines drawn.

I think it would be helpful to have any such communications made a matter of public record so that if a letter is written by Senator Johnston, or Senator Keating, or someone else to an agency, no one will say "They are trying to influence the agency." You can read the letter and it is a part of the public record.

I think that the President might have had such a situation in mind when he made his recommendation. That is my second amendment. And that apparently is not in this bill.

Can you give us the history of that, or is there any change in the administration's viewpoint?

Mr. KATZENBACH. No; there is no change in the administration's viewpoint, Senator. It was not included in the bill for this reason. The problem of ex parte communications is a difficult one. The solu-

tion that you propose, to put everything in the record, is one that, from my own limited study and knowledge, I would think would be a very good suggestion.

This problem was given to the Administrative Conference of the United States when it was set up for their comments and views and for their proposals. It is my understanding that they will make proposals dealing with the problem of ex parte communication. Because they have it actively under consideration there it is not included at this time within the administration's proposal, but I would hope that the conference would report on that in January of this coming year and will have recommendations for dealing with our problem.

Senator JOHNSTON. I think the Congress would be glad to have something on that subject. I know myself it becomes embarrassing sometimes to turn the constituents down. They feel you ought to at least present their feelings to the agency.

I know in talking sometimes I always start the conversation by saying, "I want you to know that I am not trying to exert any influence upon your decision, but at the same time I thought it my duty to call your attention to these facts."

I think that Senators agree that this is often the case, and it does become embarrassing to either turn down the request of a constituent or go ahead and bring this to the attention of the particular agency.

Senator KEATING. Well, if I may then, I will see that these amendments get into your hands for formal answers which can be made a part of the record as to the position of the Department with reference to them.

Mr. KATZENBACH. Very well.

Senator JOHNSTON. I have one more question.

I have read this bill very carefully, however, there is one thing that we want to guard carefully, and I think the Department of Justice also wants to guard very carefully, and that is the question of whether or not we have a saving clause in this bill. That is in regard to matters that have occurred in the past in violation of either the conflict of interest or bribery laws, that you should not change the length of the sentence given for a crime committed in the past.

What is your thought in this regard?

Mr. KATZENBACH. Well, this bill, being a criminal statute, could apply only prospectively to acts after its enactment. The prior law which it repeals would continue in force for the purpose of prosecution of any prior events. I think that is clear.

Senator JOHNSTON. I am a little bit doubtful of that. I know in the supreme court in South Carolina, when the liquor law was changed to make the sentence a little stiffer, there was a case where they had already tried the defendant and convicted him, and our supreme court threw it out on the ground that the legislature had changed the law and changed the conditions upon which the crime was committed.

So that is the reason I am calling it to your attention.

Mr. KATZENBACH. If that is not clear, Mr. Chairman, it certainly should be because that is the intention, and I would be happy to consider that as well.

Senator JOHNSTON. If you remember, after they changed the prohibition law, we had several cases that went to the Supreme Court after that, right along this line, and we had that question come up.

I think you gentlemen can see what I am talking about so that we make it clear in the act that all these cases shall be status quo, so to speak, and that this does not change their status but only changes the status for future cases.

Mr. KATZENBACH. For future cases.

Senator JOHNSTON. Do you have any questions, Senator Hruska?

Senator HRUSKA. No, thank you, Mr. Chairman, not at this time.

Senator JOHNSTON. Senator Ervin, do you have any questions?

Senator ERVIN. I am not quite familiar with the proposition, but I received a communication from a retired military officer objecting to certain passages of the bill, and indicating that the situation respecting retired officers should be clarified.

I was unable to be here when you began your testimony and do not know whether you touched on that—

Mr. KATZENBACH. I testified only, Senator, that we left the situation of retired military officers exactly where it stood. Now to be perfectly candid about that, we did so because it has been a matter of controversy for some time and we did not feel capable of resolving that problem. So we left it as is.

Senator ERVIN. I am very gratified to note that the Department has accepted criticism which Senator Hruska and myself voiced about the provision of this bill relating to Reserve and National Guard officers who were called to active duty for an extended period of time. I believe you have an amendment that takes care of our objection?

Mr. KATZENBACH. Yes, we do. If they are recalled involuntarily, then they are treated as special Government employees. If, as is the case with many officers formerly in the Reserve who are serving extended active duty voluntarily, we treat them the same way we would treat a regular military officer.

Senator HRUSKA. Mr. Chairman?

Chairman JOHNSTON. Senator Hruska.

Senator HRUSKA. Mr. Chairman, I should like to direct Mr. Katzenbach's attention to the problem which would confront part-time U.S. commissioners. I have here a tabulation prepared by the Administrative Office of the U.S. Courts which indicates that there are some 483 members of the bar who are serving as U.S. commissioners. I presume they are part time and that they engage in the practice of law. The proposed revision which we have here would seem to preclude this outside practice and would bar them from serving as an attorney for anyone in connection with—

any proceeding, application or request for a ruling or other determination, contract claim, controversy, charge, acquisition, arrest or other particular matters in which the United States is a party or has a direct and substantial interest.

Now this provision, if it is enacted, would preclude these part-time commissioners, who are also attorneys in private practice, from handling any Federal matter whatsoever in the course of their practice.

There are 186 of these attorneys serving as part-time commissioners who earn less than \$1,000 in statutory fees each year. And it is pretty safe to predict that if this becomes law and is interpreted in the fashion which I suggest, the ranks of the part-time commissioners will be pretty well decimated. They are not going to be satisfied with earning less than \$1,000 annually which would usually represent a very low hourly rate for the duties they render if they are going to be penalized

to this extent. Would you have any comment on this, Mr. Katzenbach?

Mr. KATZENBACH. Yes, Senator, I would.

I call your attention to section 202(a) which defines the term "special Government employee," and it means only an officer or employee of the executive or legislative branch—we only have "executive branch" here but we propose "or legislative branch"—of the U.S. Government, or with any independent agency of the United States or of the District of Columbia.

Senator KEATING. What section is this?

Mr. KATZENBACH. Section 202(a).

Senator JOHNSTON. That gives the limitation as 2 days, but I do not think it does any more than that. If a man is employed by the year, I do not think that answers the question of the Senator.

Senator HRUSKA. Yes, there is serious doubt in my mind. The special Government employee, as you define him there, renders duties for 130 days out of 365. Suppose the commissioner devotes 1 hour 1 day and 2 hours the next and so on. There may be 130 or 140 days upon which he does something. Now, will he be included in this definition or will he not?

I believe that we ought to determine that and decide whether it would be good policy to expressly exclude them or whether it would be better to state that they are included. And then, of course, we will be coming to you and asking, "Where will we get the U.S. commissioners who are so very important in the prosecution of the duties of your Department of Justice?"

Mr. KATZENBACH. That is quite correct, Senator, and perhaps it should be clarified in that respect. I thought the bill was clear as to the fact that "special Government employee" apply only to employees of the executive branch of the Government, and we were not touching the problem of employees of the judiciary. But I confess I cannot find that in the bill as it is drafted, and, if so, it should be clarified in that respect.

That was the intention. We added "or legislative," propose that, in section 202 because it was suggested at the meeting last August with this committee that there was a need often for special consultants to the committees of Congress. And we added it for that reason.

Senator HRUSKA. That is fine as to section 202, Mr. Katzenbach—

Mr. KATZENBACH. Yes, I think we should have a definition of "Government employee" that takes care of the—

Senator HRUSKA. That is true as to section 202. However, I direct your attention to section 205 which says:

Whoever, being an officer or employee of the United States in the executive, legislative, or judicial branch * * *.

That is pretty broad language, and I am sure it includes U.S. commissioners.

Mr. KATZENBACH. Yes, sir, I believe it does. I am not sure how the problem should be substantively resolved. If the man is a full-time U.S. commissioner, or is acting more than the period of special Government employment, perhaps, Senator, he should be subject to these laws—

Senator JOHNSTON. Receiving any more than a certain amount of compensation.

Senator KEATING. I am not sure this is as serious as has been indicated. These commissioners are not barred from probating wills or trying cases in State courts or many, many other things. It is only with reference to a claim against the U.S. Government. I do not know whether there is anything in the statutes or not, but I believe it would be improper for me to go into a Federal court and try a case. I do not know whether I am barred by statute. I do not think I am, but I do not think it would be proper.

Mr. KATZENBACH. The Court of Claims I think is all.

Senator KEATING. I do not think it would be proper to actually try a case in the Federal court. Now I am not sure but what it is perfectly all right to bar commissioners who are working for the United States, even at a low amount, from participating in transactions where the United States is involved. I have an open mind on it. However, I think they are not barred from general law practice.

Mr. KATZENBACH. No, they can engage in that.

Senator HRUSKA. I am not so sure about that because the law practice, if my colleague from New York will permit me to say, has changed a great deal since he and I were in it. A lawyer in the general practice can easily spend a great deal of time in the field of administrative law.

For example, a part-time U.S. commissioner may be consulted by someone who is having trouble collecting his social security payments. Isn't that a claim——

Senator KEATING. They go to their Senator on the Finance Committee. [Laughter.]

Senator HRUSKA. That is probably correct, except some of my constituents live more than 1,500 miles away from here, so they do not do that.

Wouldn't that be barred? It certainly would under section 205.

Or suppose a commissioner becomes involved in the probate of an estate. Certainly he would be entitled to probate an estate. But when he files an estate tax return, he must negotiate certain aspects of it before it is in final form in order to determine what sum is to be paid.

With respect to these preliminaries, would he be barred by this statute? I think he would.

If you tell a lawyer that he cannot handle tax matters or cases involving the various Federal agencies, you have just told him, "You better resign as U.S. Commissioner." He can't afford to restrict his practice this much. And it applies to so many.

I should like leave, Mr. Chairman, to have placed in the record a breakdown showing the number of U.S. Commissioners who are serving on a part-time basis. This was furnished to me by the Administrative Office of the U.S. Courts. It will help to illustrate the extent of the problem.

Senator JOHNSTON. That will be made a part of the record.

(Senator Hruska submitted the following statement for the record:)

The Administrative Office of the U.S. Courts has furnished me with the following information about the U.S. Commissioner system:

"Six hundred eighty-five U.S. commissioners were in office as of February 20, 1962. A total of 20 Commissioners report that they have no other occupation, but only 5 of these are recognized as full-time Commissioners by the Administra-

tive Office for the purpose of reimbursement of office expense. The 665 Commissioners having other vocations have reported their occupations as follows (as of Feb. 20, 1962) :

Clerks of U.S. District Courts-----	8
Deputy clerks of U.S. District Courts-----	48
Referees in bankruptcy-----	3
Court reporters-----	1
Practicing members of the bar-----	483
Miscellaneous-----	122

"At the present time, 50 Commissioners are covered by the Civil Service Retirement Act. These are Commissioners whose earnings for 3 consecutive years were \$3,000 or more per year as required by 5 U.S.C. sec. 2252(g)."

It has been brought to my attention by members of the judiciary and others that section 205 of H.R. 8140 is now drawn in terms sufficiently broad to include part-time U.S. commissioners, and would prevent such commissioners from serving as an attorney for anyone in connection with "any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest." In substance, it is likely that this provision, if enacted, would preclude any part-time commissioner who is also an attorney in private practice from handling any Federal matter in the course of his private practice.

It is pointed out that since there are 186 licensed attorneys who are also part-time commissioners earning less than \$1,000 in statutory fees each year, it is safe to predict that enactment of H.R. 8140 in its present form will decimate the ranks of part-time commissioners.

Hence, the conclusion is that the bill should be amended so as to make special provision for part-time commissioners.

Senator ERVIN. Now I am a little troubled about page 12—excuse me, had you finished, Senator Hruska?

Senator HRUSKA. I am finished. I am sure we have not disposed of it, but my intention this morning was to raise the point for further discussion and consideration.

Senator ERVIN. This bill has a lot in it.

On page 2, "for the purpose of this section," I do not know whether that is confined to section 202, "‘public official’ means Member of Congress, or Resident Commissioner, either before or after he has qualified, or an officer or employee or person acting for or on behalf of the United States * * *" and so forth.

Now on page 12 it says :

Nothing herein or in section 203 prevents an officer or employee, including a special Government employee, from acting, with or without compensation, as agent or attorney for or otherwise aiding or assisting his parents, spouse, child, or any person for whom he is serving as guardian, executor, administrator, trustee, or other personal fiduciary. * * *

and so on.

Now would that exclude a Member of Congress acting as a personal fiduciary? In other words, is there a distinction between "public official" and "public officer"? I cannot see any reason why a Member of Congress should be excluded from acting as a personal fiduciary and receiving compensation.

Mr. KATZENBACH. Senator, the definition that you read in 201 is confined to the bribery section of the act and does not apply over here to the language that you read from the other section.

Now there is nothing in existing law or elsewhere in the statute that prohibits a Member of Congress from performing these functions. There would be things in the statute which would prohibit, or be

thought to prohibit, these other categories of people. For that reason they are exempted in this limited situation.

Senator ERVIN. I am a little concerned about this. I have a friend who appointed three of us as trustees of an estate. One is a newspaperman, another is a banker, and another one is a lawyer. I was a lawyer at that time. It was through a will.

We have a controversy with the Federal Government about taxation, a question about taxation. Now I would like to know, for my own personal benefit, whether I can argue that with them, the agency, under this as a trustee. I do not want to end up in Alcatraz. [Laughter.]

Mr. KATZENBACH. I was looking here, and I do not have with me the only possible application of existing law which would be 18 United State Code, section 283, which to my recollection in part applies to Members of Congress and refers, I believe, to the receipt of compensation for—no, that is 281. Section 281 does not include Members of Congress.

Do you have it here?

Mr. LINDENBAUM. Yes.

Mr. KATZENBACH (reading) :

Whoever being an officer or employee of the United States or any department or agency thereof, or of the Senate or House of Representatives, acts as an agent or attorney for prosecuting any claim against the United States or aids or assists in the prosecution or support of any such claim * * *

And it goes on.

But that does not apply to Members of Congress or Members of the Senate. It does apply to officers or employees of the Senate or House of Representatives, but not to Members.

Senator ERVIN. I do hope that we can clarify these laws because they are very confusing in their present state.

I have read decisions on the point, and about come to the conclusion that a Member of Congress, who happens to be a trustee or executor, could not receive any fees. I doubt whether he could charge any fees under the present laws for anything he did in connection with any agency or department of the Government.

In other words, he could not go up and argue and fuss with Internal Revenue Service. However, he could go into a Tax Court case—he could forgo his compensation as trustee and go in and argue with the Internal Revenue Service, and then when they got through with him he could go in the Tax Court and charge in the Tax Court.

Mr. KATZENBACH. I think that is an absolutely correct statement of the law, that under 281 of the Criminal Code he is prohibited from doing this if he receives compensation for doing it, and not otherwise. There is nothing that prohibits him from appearing with or without compensation in a court, except for the Court of Claims. He cannot appear in the Court of Claims. And I think that is the status of the existing law, which I think demonstrates as well as anything that it has been made by a series of ad hoc statutes with wide overlap and no great consistency in terms of any very discernible principle.

Senator ERVIN. Now is it your interpretation of the last paragraph, starting with line 20 on page 12 and ending on line 7 on page 13, that that will relieve a Member of Congress from law statutes in a case where he is acting primarily as trustee or executor rather than just as a practicing attorney?

MR. KATZENBACH. No, sir, my view would be that this language does not apply to a Member of Congress, nor is there any prohibition which applies to a Member of Congress in that respect.

The only prohibition that applies to a Member of Congress is the one from existing law, section 204, which is practice in the Court of Claims, and my recollection is that there is no other prohibition in this statute—let me retreat from that statement. I am incorrect, I am informed.

We leave the situation in this respect exactly as it is. Section 203 prohibits the receipt of compensation for these representational activities, but does not preclude a Member of Congress from representing if he receives no compensation for it. That is the existing law, and that is left exactly as it is.

Senator ERVIN. In other words, he still cannot represent an estate. If he does, he cannot take any fees as executor?

MR. KATZENBACH. That would be correct. In the case you mention, that involves a claim against the United States, and he cannot participate in any fee with respect to that.

Senator ERVIN. This language on line 20, does that refer to this one section and nothing else?

MR. KATZENBACH. That refers to section 205 and part of section 203, but it applies only to officers or employees, which would not include a Member of Congress.

Now it was the administration's viewpoint on this bill that matters affecting Members of Congress were best left to Members of the Congress to resolve. We made no recommendations in that respect, and I would make none now. The House committee left the existing law exactly as it is with respect to Members of Congress, and that is as it is and I feel it would be inappropriate for me to comment on that.

Senator ERVIN. Would not that relieve the Secretary of Commerce, or any of the Cabinet officers, of inhibitions? They could go and practice even before their own departments, couldn't they, if they happened to be executors and administrators?

MR. KATZENBACH. They could not practice with respect to anything in which they had participated personally and substantially as a Government employee.

Senator ERVIN. I see.

MR. KATZENBACH. It could only be done if the Government official responsible for the position approves—

Senator ERVIN. The Secretary of Health, Education, and Welfare, however, could make an appearance and receive compensation under this for a parent, on a matter before the Internal Revenue Service or Treasury.

MR. KATZENBACH. As administrator, trustee, or personal fiduciary there would be nothing in this statute which would prevent him from doing so. It would not be a criminal offense for him to do so, that is correct.

Senator ERVIN. Is it your interpretation that as trustee of an estate I can be relieved of all responsibilities under the law? I can go in and argue to my heart's content with the Internal Revenue Service about a matter of taxation affecting the estate, providing I do not receive any compensation to do so?

MR. KATZENBACH. That is what the existing law provides, Senator, as I read it.

I perhaps ought to add that of course the hypothetical that you gave with respect to the Secretary of Commerce, or HEW, that is prohibited by Presidential regulation issued by this administration with respect to heads and assistant heads and White House employees who are forbidden to do anything of this nature. But it would not be a criminal offense under the statute. Indeed, it would not be a criminal offense under the existing law for that to be done.

Senator JOHNSTON. Any other questions?

We are certainly glad that you have come before us this morning. You can answer these questions brought up by Senator Keating through correspondence with the committee.

Mr. KATZENBACH. I will certainly do the best I can, Senator.

Senator JOHNSTON. Thank you very much, Mr. Katzenbach.

We have Congressman John V. Lindsay of New York here. I believe he has someone he wants to introduce at this time.

STATEMENT OF HON. JOHN V. LINDSAY, A REPRESENTATIVE IN CONGRESS FROM THE 17TH CONGRESSIONAL DISTRICT OF THE STATE OF NEW YORK

Mr. LINDSAY. Mr. Chairman and members of the committee, I am not going to testify at any length. In fact, I do not think I will testify at all. I will submit the statement I prepared for the record.

The House has been in session since 11 o'clock on the farm bill, and we are having a series of quorum calls and teller votes right now. So I am going to go back.

I do want, first of all, to introduce your next witness who will testify, and say a word about him, and about the bar association committee that is the author of 80 percent of the House bill and of this book, which is probably the leading work on the subject of conflicts of interest in the Federal branch that has been written to date.

The witness is Mr. Roswell Perkins who is the chairman of a special committee of the Association of the Bar of the City of New York. Mr. Perkins' committee worked for well over 2 years straight on this subject with a fund of money granted by the Ford Foundation to see if sense could be made out of chaos in the area of conflict of interest legislation in the executive branch. I was pleased to have been appointed to that committee before becoming a Member of Congress, and was one of the team of 10 people which worked on this subject and drafted the bill.

Mr. Perkins is accompanied by Mr. Charles A. Horsky, a partner in Covington & Burling here in Washington, who devoted his skills and professional talents and energy to this subject, and also Alexander C. Hoagland, Jr., who is a constituent of mine along with Mr. Perkins. Mr. Hoagland is a New York lawyer and one of the country's experts on the subject of conflict of interest in the Federal branch.

This committee produced this book and a bill. That bill was the bill that I introduced in the House in the 86th Congress and my distinguished colleagues from New York, Senators Keating and Javits introduced in this body. A perfected bill was introduced in the 87th Congress. Thereafter the House started to work on this subject.

The thanks of the country and of the Congress should go to Mr. Perkins, Mr. Horsky, and Mr. Hoagland and the other members of

that bar association committee in New York for the attention that they gave to the subject, and the time and the skill with which they tried to get a good bill through the House.

I should like to compliment also Mr. Katzenbach of the Justice Department for the way in which he worked with the House Judiciary Committee on the subject, with the chairman, Mr. Celler, and myself as one of the coauthors of the bill. The work of the House Judiciary Committee was a composite and compromise of largely the work of the bar association committee here represented, the Department of Justice, and the Judiciary Committee of the House itself. It is admittedly a compromise, and by virtue of that fact, it can stand some perfection. On the whole I would agree with the testimony of Mr. Katzenbach, and I will agree with the testimony to come of Mr. Perkins, as to the improvements that can be made in the bill. If the Senate would make those improvements, then when the matter goes to conference, hopefully we will come out with something that could be almost near perfect, which would be a remarkable achievement in this difficult and complicated area.

In the area of gifts, I would prefer to see the recommendation that will be made by Mr. Perkins incorporated in the House bill. I must tell you, however, that this was controversial in the House Judiciary Committee. The majority of the members of the committee preferred to see some adjustments to the existing criminal bribery statutes rather than to have any separate section on the subject of gifts. There again I would have dissented from that but, on the other hand, it was important to get a bill through the House. I should like to add parenthetically that the House bill came up under suspension of rules which means, of course, that there were no amendments permitted. The reason it came up under that procedure is that this is a subject on which it is easy to demagog, and we thought generally speaking we were being realistic in this area in trying to write a law under which the executive branch would find it possible to recruit talent and information, and not unduly penalize them in the process. We were fearful that those Members of Congress who liked to be more righteous than God from time to time would load the bill with crippling amendments that would indeed destroy the whole function and purpose.

There is an area that I would strongly disagree with Mr. Katzenbach, as I understood his statement, and that is in the area of partnerships. I think that Mr. Katzenbach was suggesting that insofar as Government executive branch lawyers are concerned, that the House bill might make it more difficult to recruit legal talent because of stringencies on practice when they return to their firms. I am not sure that I understood him, but I think that the House bill protects the individual lawyer in the firm in this regard. Don't forget that, as I understand present law, the disqualification of a partner disqualifies the entire firm. So that if a partner who leaves the executive branch is barred forever from dealing or switching sides in an area in which he has directly participated, if he becomes a member of a firm, under case law, Federal case law as I read it, that firm is disqualified totally from engaging in that area. What the House bill has done is to say, "All right, the former Government employee is forever barred in any area where he has directly participated himself, and if he should join a firm, that firm is barred for 2 years, but

after 2 years the imputation stops." In respect to matters in which a former Government employee has had general supervision, and not necessarily direct participation, here again the House bill would not bar under the doctrine of imputation the firm of which he becomes a member.

I am afraid that if Mr. Katzenbach's theory is accepted, and that whole partnership provision in the House bill is removed, it will make more trouble in the recruitment area than we have under present law. I therefore urge this distinguished committee to go easy when it comes to changing the House bill in that regard.

Lastly and finally, I would support the introduction into the Senate bill, certainly, of administrative procedures designed to guide along the problem of conflicts of interest in the executive branch on a day-to-day basis. This should not be primarily a criminal problem, and it should not be primarily a problem of men being recruited by the Federal branch or leaving the executive branch at their peril. The guidelines should be clear.

No law that can be written by Congress is going to answer all the questions. Therefore, it seems to me highly desirable that the recommendation of the bar association committee that there be created an administrative office to handle individual problems, clarify areas as they arise, is highly desirable.

With that, Mr. Chairman, I have inserted in the record the prepared testimony and I hope the committee will be able to listen with some care and attention to the testimony of my friend and constituent from New York, Roswell Perkins, and the other two gentlemen of the bar association committee who are also here, Mr. Horsky and Mr. Hoagland.

Senator KEATING. Mr. Chairman, may I just say a word?

I know of the deep interest of Congressman Lindsay in this problem. He has talked with me about it on a number of occasions. He has been a pioneer in the effort to do something in this field, and I think he should not leave here without our commendation for the very effective work which he has done.

It is difficult to get any committee to agree on anything in this field, and I think it is quite remarkable that you and your associates, Congressman Celler and others, were able to get this bill out of the committee and through the House in almost any form. When I was there I was trying to do the very same thing without success, and I have very high regard for someone who can do that.

I join, Mr. Chairman, with Congressman Lindsay in introducing Mr. Perkins who, with his associates, has made such a deep study of this problem. There is probably no one better informed person on this subject than the witness we are about to hear.

I appreciate your being here, Congressman Lindsay, to give us the benefit of your views which will be read carefully as they should be.

Mr. LINDSAY. Thank you, Senator Keating.

Senator ERVIN. I regret that I will not be able to stay and hear the presentations, because of other pressing engagements, but I will certainly read them. I am very much impressed by some of your remarks about the difficulties law firms find themselves in, or will find themselves in. I do not think any law firm could stay in existence unless they could practice before a Federal agency or department.

Mr. LINDSAY. Thank you very much, Senator Ervin.

Senator JOHNSTON. We will wait just a few minutes. That was the bell ringing for the Senate to go into session. First, let me say to you, Congressman, that we appreciate your interest in this matter and we appreciate your coming over here especially when you are so rushed over in the House at this particular time. Moreover, we appreciate your interest and the work you have done in this particular field. We are certainly glad to have you come before us. I believe you are going to leave something for the record?

Mr. LINDSAY. Yes. But I think it has already been admitted. I will leave a copy here.

Senator JOHNSTON. We would like to have that and it will be made a part of the record.

Mr. LINDSAY. Thank you.

(The prepared statement of Hon. John V. Lindsay, a Representative in Congress from the 17th Congressional District of the State of New York, is as follows:)

TESTIMONY OF JOHN V. LINDSAY BEFORE THE SENATE JUDICIARY COMMITTEE IN BEHALF OF THE CELLER-LINDSAY CONFLICTS-OF-INTEREST BILL, H.R. 8140, JUNE 21, 1962

Mr. Chairman and members of the committee, I am delighted to be here today in order to speak on behalf of the House bill on conflicts of interest, a most important piece of legislation that passed the House of Representatives in the first session of this Congress. This is a complicated subject and one which does not lend itself to sensational news or, sadly, general public interest. It is only when scandal erupts that there is a loud outcry calling for appropriate legislation in the area of conflicts of interest.

I believe that the bill that the House passed a year ago, known as the Celler-Lindsay bill, is a thoroughly constructive piece of legislation. You may call me biased in the bill's favor if you wish, because I was one of the authors of the bill and have spent many years studying this subject.

In 1957, before coming to Congress, I was privileged to be appointed a member of a special committee of the Association of the Bar of the City of New York, funded by the Ford Foundation, to study conflicts of interest in the executive branch of the Federal Government.

Members of this special committee, other than myself, were the following:

Roswell B. Perkins, chairman, former Assistant Secretary of Health, Education, and Welfare.

Howard F. Burns, distinguished Cleveland lawyer and member of the Council of the American Law Institute.

Charles A. Coolidge, eminent Massachusetts lawyer, former Assistant Secretary of Defense for Legal and Legislative Affairs, and former Special Assistant to the Secretary of Defense to recommend on the Hoover Commission reports and on reorganization.

Paul M. Herzog, former Chairman of the National Labor Relations Board, and former associate dean of the Graduate School of Public Administration, Harvard University.

Alexander C. Hoagland, Jr., distinguished New York lawyer and former fellow, the Association of the Bar of the City of New York.

Everett L. Hollis, corporation counsel, General Electric Co., and former General Counsel of the Atomic Energy Commission.

Charles A. Horsky, eminent Washington lawyer and partner in Covington & Burling.

John E. Lockwood, leading New York attorney, former General Counsel, Office of Inter-American Affairs, Department of State.

Samuel I. Rosenman, eminent lawyer and former special counsel to Presidents Roosevelt and Truman.

The staff director was Prof. Bayless Manning, of Yale Law School, and the associate staff director was Prof. Marver H. Bernstein, of Princeton University. Professor Manning subsequently became one of the three Presidential advisers of this administration on the subject of conflicts of interest.

In 1960 our committee published a book entitled, "Conflict of Interest and Federal Service," which is regarded as the leading study on the subject of conflicts of interest in the executive branch. Our committee drafted a bill which I introduced in the 86th Congress. I reintroduced a perfected bill, H.R. 3050, in the 87th Congress. A companion bill was introduced in the Senate by my distinguished colleagues, Senators Javits and Keating.

The House bill is a composite of the efforts of the House Judiciary Committee, spreading over a period of years, of the special committee of the Association of the Bar of the City of New York, and the administration's own review of the subject. The bill as passed by the House was built largely around the recommendations of the bar association committee.

We approach this subject with two themes in mind. The first is that ethical standards in the U.S. Federal Government must be beyond reproach. The second is that the Federal Government must be in a position to obtain the personnel and information it needs to meet the demands of the 20th century. These themes are coequal. Neither may be safely subordinated to the other.

A conflict of interest does not necessarily presuppose that action by the official favoring one of these interests will be prejudicial to the other, nor that the official will in fact resolve the conflict to his own personal advantage rather than the Government's. If a man is in a position of conflicting interests, he is subject to temptation however he resolves the issue. Regulation of conflicts of interest seeks to prevent situations of temptation from arising. An Internal Revenue agent auditing his own tax return would offer a simple illustration of such a conflict of interest. Perhaps the agent's personal interest in the matter would not affect his discharge of his official duty; but the experience of centuries indicates that the contrary is more likely, and that affairs should be so arranged as to prevent a man from being put in such an equivocal position.

The danger of such conflicts of interest was noted long ago; even before the Sermon on the Mount warned against serving two masters. Plato had forbidden his philosopher kings to hold any personal economic interests whatever. In America the problem was recognized early. When the United States was new, its first Congress forbade the holder of the office of Secretary of the Treasury to invest in Government securities; and the bulk of our present conflict of interest statutes dates from the 19th century. But since the end of World War II the attention of the American public has been drawn to conflict-of-interest problems with a new frequency and intensity.

I should like to talk about the aspect of the bill not concerned with the subject of bribery. I am more concerned for the moment about those sections which deal with the classical subject of conflicts of interest. The House bill sought in this connection to modernize and to make understandable seven ancient statutes which since the middle of the 19th century have formed the core of legislation and general application dealing with conflict of interest problem among executive branch employees.

In general, what do these seven statutes do? Three of them restrict Government employees or former employees from assisting others in the prosecution of claims against the United States. A fourth is sighted essentially on the same target but is focused a little differently: it forbids Government employees to assist others for pay before a forum of the executive branch in any matter in which the United States is interested. The fifth statute prohibits a Government official from acting for the Government in transactions with a business entity in which he has an economic interest. The sixth forbids the official to receive pay from non-Government sources in connection with his official services. And the seventh forbids the official to receive pay for assisting another in obtaining a Government contract.

More tersely, five of the seven provisions forbid officials to assist outsiders in their dealing with the Government; one requires officials to disqualify themselves from acting in Government matters in which they have a conflicting personal economic interest; and one prohibits outside pay for Government work.

Some incidental facts about these statutes are of preliminary interest. Five of the seven were enacted between 1853 and 1872. Three were responses to the venalities of the Civil War. All but one are criminal statutes, in the style of the 19th century, with differing penalties ranging from \$1,000 to \$10,000 and from 6 months' to 2 years' imprisonment. It is the executive branch that feels the main sting of the provisions, with Members of Congress expressly covered by only two of them, and the judiciary by none. Five apply to employees when in Government service; the other two—both of them prosecution of claims

statutes—restrict the activities of former Government employees for a period of 2 years. No two of the provisions use the same drafting language in defining the scope of their application or the offense proscribed, though three of them refer expressly to prosecution of Government claims.

For the lawyer called upon to give an opinion interpreting these statutes, they are a nightmare; they spew up one unanswerable question after another. Who is an officer or employee under section 281, for example? The term has been interpreted to include not only full-time regular personnel but part-time and intermittent personnel, whether or not paid by the Government. It is usually a surprise to an intermittent adviser to learn that he is legally an employee of the Government—and not just on the days on which he is actually doing Government work.

To take another recurrent problem under sections 281, 283, 284, and 99, what does it mean to assist in prosecuting a claim? May one appear as a witness to testify in favor of a claim against the Government? If not, what can one do if subpoenaed by the claimant? Does one act as counsel if he writes a memorandum on a point of law? Again the answers may vary from statute to statute.

Perhaps the most baffling problems of interpretation arise from the connecting phrases in the statutes—key phrases purporting to define the limits of these criminal offenses. Section 281 forbids the employee to assist the outsider in an executive forum in any “matter in which the United States is directly or indirectly interested.” In what matter coming before the executive branch is the United States not directly or indirectly interested? Section 284 forbids the former employee for 2 years to assist in prosecuting claims involving any subject matter directly connected with which he was employed by the Government. If a claimant is suing on a defense procurement contract, should the phrase be interpreted to bar a former Government employee only if he worked on that contract? If he worked on other contracts for the same kind of commodities? If he worked on other contracts for another armed service in the Department of Defense? and so forth. How direct a participant must he have been to be barred?

These statutes are shot full of exceptions. In a helter-skelter way Congress has frequently recognized that the rigidity of the general statutes on conflict of interest makes them unworkable as applied to intermittent employees and particular Government positions. The United States Code is peppered with spot exceptions and exemptions total or partial, enacted piecemeal to meet special cases. Inevitably, this process has produced an arbitrary pattern of controls and exemptions, working unequally, for no apparent reason, from position to position and from office to office. This bill would make all of these special exceptions unnecessary.

Finally, there is a great problem of varying interpretation regarding outside compensation restrictions, largely embodied in present day section 1914 of title 18. For example, to what extent are preexisting stock options, pension plans, and insurance plans outlawed compensation under the statute? When are the rights under these plans vested and when not? In an effort to comply with section 1914 and simultaneously to maintain the appointee's eligibility under these security plans, subtly differing degrees of quasi resignation or leave of absence are devised. For services carefully designated as past, substantial severance payments may be made, with the payments themselves sometimes spread forward in installments over the period of the appointee's Government service. Formal written resignations are executed for the record when the clear expectation of all concerned is that the appointee will in fact return after his stay in Washington.

No one can say with any confidence which of these arrangements, or whether any or all of these arrangements, are legal and permissible under the existing statutes. In the overwhelming majority of instances it appears that, where the statutes are recognized and considered at all, Government appointees and their lawyers lean over backward in an effort to comply, but the crude style of the ancient conflict-of-interest statutes is an inducement to artifice, and there will always be a minority ready to pursue every advantage. When compliance with the law becomes mainly a matter of form, the law is made to appear ludicrous, legal administration is undermined, the underlying policy of the law may be subverted, and the most conscientious bear the heaviest burden. And it is usually a sign that the law is out of touch with reality.

The Celler-Lindsay bill consolidates the scattered conflict-of-interest laws into one unified act, with a common set of definitions and consistent approach: broadens the scope of the conflict-of-interest laws to cover the full range of

modern governmental activities; differentiates in some respects between regular and intermittent employees and accommodates itself to the modern use of intermittent personnel; generally strengthens the restraints against conflicts of interest, and elevates to statutory level some important restraints now in regulations or not covered, particularly relating to gifts and use of office to obtain something of value from persons doing business with the Government; recognizes the legitimate private economic interests of Government employees, and permits employees to retain certain security-oriented economic interests, particularly continued benefits in outside pension plans.

More specifically, the program tightens up on existing conflict-of-interest laws in the following general ways:

First. Persons occupying a position inside Government must not be allowed to tamper with the wheels of government to the special advantage of themselves or any entity on the outside in which they have a personal economic interest.

Second. Persons occupying a position inside Government must not be allowed to help an individual or entity on the outside, where the latter is seeking to make the wheels of government move in a particular way.

Third. Persons occupying a position inside Government must not be allowed to use their office as a source of power or of confidential information for purposes of advancing their personal economic interests.

One of the significant contributions that this bill makes to this field is the clarification that it lends to a heretofore muddy field. It is important that men who lend their services to the Government have a clear idea as to where they stand insofar as outside interests are concerned and the position that they will be in after leaving Government service. For example, the heretofore murky and dangerous waters surrounding the problem of partners of Government employees and former Government employees is clarified. I refer specifically now to the committee report on pages 11 and 12 which discusses the question of past employment and partners. The status and obligations of partners of Government employees under the conflict-of-interest statutes is not specified in present law. Under the Canons of Ethics of the American Bar Association (canons 6, 36, and 37), and at common law—see *United States v. Standard Oil Co.*, 136 F. Supp. 345 (D.C., N.Y., 1955)—the activities of partners are to some extent imputed to each other and to some extent disqualify non-Government partners from activities with which Government partners have become identified. The unsettled state of the law has given rise to serious confusion as to the precise limits of the doctrine of imputation. For this reason, the bill, section 207 (c) and (d), prescribes the disqualification of partners of Government employees and former Government employees in the executive branch, the independent agencies and the District of Columbia, and the limits on such disqualification.

Section 207 (c) provides that for 2 years after the termination of a Government employee's service his partners must refrain from any activities from which the ex-Government partner is prohibited from engaging by section 207(a). This means that if a Government employee or special Government employee has participated directly and substantially in a matter in which the United States is directly and substantially interested not only is he personally prohibited from representing private parties in that particular matter, but his firm is barred with respect thereto for 2 years following his departure from Government. In a sense this represents a liberalizing of present law, because under the common law doctrine of imputation if the former Government employee is forever barred from "switching sides," so would be his firm. Under this bill, the restraint is lifted from the firm, but not from the former employee, after 2 years.

In addition, section 207(d) provides that during the continued service of a partner as a Government employee or special Government employee, his firm is barred from acting in particular matters in which the Government partner has at any time participated or which is the subject of his official responsibility. This also represents a clarification. Under the imputation doctrine the firm, under present law, is barred from a great many areas, many of which are wholly unrelated to the part-time Government employee's work. The new bill narrows the disqualification to the same area.

Finally, in order to mark the limits of the imputation doctrine, section 207 provides that a partner of a present or former Government employee or special Government employee in the executive branch, an independent agency, or the District of Columbia, shall as such be subject to the provisions of sections 203, 205, and 207 only as expressly provided in subsections (c) and (d) of section 207.

In short, after a Government employee leaves the Government, his firm must for 2 years stay out of matters in which he has participated for the Government. And while the Government partner remains in the Government, his firm must stay out of matters in which he participates or has participated or which are under his official responsibility. However, it is not the intent of the provisions of section 207 (c) and (d) that the fact that a partner of a Government employee or former Government employee is also a partner in a firm in which the Government employee or former Government employee is not a member should disqualify the latter firm. Existing law with respect to the rights and obligations of the United States in the legislature and judicial branches is left unaffected by the bill.

Mr. Chairman, I wish I had time to discuss in far greater detail the provisions of this bill and the importance of the legislation in general. Suffice it to say that loopholes are closed and the lines are clarified. At the same time archaic and unnecessary provisions are eliminated.

It is vital at all times that the public interest be safeguarded and that the highest standards of integrity in the public service be maintained. It is equally vital that the Government be able to attract men of ability and competence into Government service. They will not be attracted if the law is so written that they must be unnecessarily penalized for accepting Government service. Both points of view must be accommodated; namely, a body of law which is clear, reasonable, and protects the public from abuse of office, and at the same time which makes possible the recruitment into Government service of men of talent and ability who as public spirited citizens wish to serve their Government.

Senator JOHNSTON. We will have to wait for just a moment to see whether or not we have permission to go forward.

Off the record.

(Discussion was had outside the record.)

Senator JOHNSTON. On the record. Mr. Perkins, we will let you proceed to introduce yourself, and of course if we do not get permission to sit we cannot help that.

STATEMENT OF ROSWELL B. PERKINS, CHAIRMAN, SPECIAL COMMITTEE ON THE FEDERAL CONFLICT OF INTEREST LAWS, THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK; ACCOMPANIED BY CHARLES A. HORSKY, ATTORNEY AND PARTNER, COVINGTON & BURLING, AND ALEXANDER HOAGLAND, JR., ATTORNEY AND FORMER FELLOW, THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

Mr. PERKINS. Thank you, Mr. Chairman, for the opportunity to be here.

On my left is Charles A. Horsky, who has been introduced, and on my right is Alexander C. Hoagland.

Before beginning I want to thank Senator Keating in particular for his strong support of our work in this area. As you know, Mr. Chairman, he introduced S. 603 which embodied the recommendations of the bar association.

We believe that the enactment of H.R. 8140 is a matter of great importance. We are dealing basically, Mr. Chairman, with two policies. One is the problem of recruitment in a cold war era, and the second is the protection of the Government. And we view H.R. 8140 as an effort to balance these two important concerns.

As far as recruitment in the cold war era is concerned, as we all know, the Soviet Union is able to attract and mobilize all its human resources to the services of the Government holding an international world view receptive to long-range planning. Our adversary is play-

ing the national power game with resourceful staffs, and we have to ask ourselves whether we are doing all we can to assure ourselves the needed talent for Government service and to see what policy changes could improve our position. So that we think the stakes riding at the issue of Government manpower today are high and do not permit chances to be taken. At the same time we have to watch to protect the Government because the area of Government activity is greatly expanding, as we know and as has been pointed out by Senator Ervin. There is scarcely anything today that business can do without contact with the Government at some point. Furthermore, the forms of venality are much more subtle today than they were. And, therefore, the important aspects of H.R. 8140 which are here to protect the Government in a new and expanded era of Government activity.

And also, as has been pointed out, there is a huge investment of work in H.R. 8140. It culminates a continuous effort of study inside and outside of the Congress for over 5 years. It has been made clear that it is a major goal of the administration.

The hour is late in Congress, and we do hope that a bill can get to conference as soon as possible after this committee has had an opportunity to consider it thoroughly.

Now as far as the purposes and reasons for the bill are concerned, they are set forth ably at pages 2 to 7 of the House report, and I think I would be duplicating to repeat those.

Similarly, the key provisions are summarized well in pages 8 to 17 of the House report, and I think I would be taking an undue amount of your time to repeat that in testimony.

I will say that the bill would carry out most of our recommendations, that is, the recommendations of the special committee of the association of the bar, although not all of them.

Turning to page 2 of the outline of my testimony, I would like to refer to several areas, which are not covered by H.R. 8140.

It has been mentioned that gifts are not covered. Now gifts with a provable attempt to influence an official act are squarely covered by the bribery sections. That much we can concede.

We must further concede that most departments and agencies have regulations concerning gifts, and also that the President's Executive Order 10939 of last year bars gifts, but is applicable only to Presidential appointees. A further Presidential memorandum of this year bars gifts for advisers and consultants.

Now we conclude that in spite of the existing regulations gifts should be barred by an overall statute with regulatory power in the President to carve out exceptions. And I have attached to my testimony as exhibit A, draft language for a section on gifts which is substantially identical to the amendment offered by Senator Keating this morning.

Now I would like to add that this bill, if it were enacted this year in its present form, could easily be amended in a future year to add a gifts prohibition. A gifts prohibition is not so inextricably intertwined with other provisions that it could not be dealt with separately. So, therefore, while we do think it is important and desirable, if it meant the difference between passage or nonpassage of a bill this year, we would be strongly in favor of acting and moving ahead with the bill. Incidentally, that is a recurrent theme in my testimony.

We are anxious to see improvements and strengthening of the bill in certain areas, but above all we feel it is important that there be action this year and would not want to press any amendment or change to the point of its being a deterrent to enactment.

Senator KEATING. I certainly hope for action this year, but I also am aware of the legislative process which is that if they are not put in this year, they won't be put in for years and years to come. That is just the way we operate here. And it is almost a sure prediction. So if they are important, I would think that a delay of 6 months in the passage of better legislation would not be so serious that we should not give that consideration.

Mr. PERKINS. Yes, Senator Keating. My only thought was if legislation had started in the House, and if it did not go through at this session at all and we had to start completely fresh—

Senator KEATING. That is true.

Mr. PERKINS. I think it would be easier to amend in a future year than to start the whole program again. But you are far more experienced than we.

Senator KEATING. Well, I certainly hope we can get action this year. I share your view in that.

Mr. PERKINS. A second section which was a part of the bar association recommendation, and it is closely related to gifts, is a section which we referred to as "Abuse of Office." This is essentially coercion by a Government official, however subtle, to induce private advantage for himself or his associates.

Now this is not well covered by departmental regulations and not covered at all by Executive Order No. 10939.

Like gifts, this area was deemed appropriate by the bar association committee for legislation. And again I have attached draft language for a section on "Abuse of Office," as exhibit B. But again I would add that this type of a prohibition is separable from the rest of the bill and could arguably await another year.

A third area not covered by H.R. 8140 is emphasis on administration and administrative remedies. Conflicts of interest is a day-to-day problem of employee conduct and personnel administration. Also, past emphasis on criminal law procedures makes enforcement clumsy and ineffective.

Now while it is not absolutely essential as a matter of law, as Mr. Katzenbach has pointed out, we believe the bill would be greatly strengthened adding a section placing squarely on the President and heads of departments and agencies the responsibility for issuing regulations not inconsistent with the statute; for the development of techniques for prevention of conflicts of interest, through internal information programs and reporting; and enforcement within the executive branch, including use of full range of disciplinary powers available to department and agency heads.

And we have attached recommended language as exhibit C. Now this exhibit C is a summarized and shortened version of the same administrative section which Senator Keating has introduced. We would welcome the full version Senator Keating has proposed as an amendment, and this abbreviated version was merely an attempt to make it shorter and perhaps easier to digest.

But the principle has been well stated here this morning by Senator Keating.

We think it is very important that criminal laws be supplemented, not derogated but supplemented, by active day-to-day enforcement within the executive branch in the same way that other employee misconduct is dealt with.

Now turning to amendments recommended by the Justice Department, we support most of these proposed changes. I think Congressman Lindsay has raised a red flag as to the effect of deleting the postemployment partner provision, and we will take one more look at that and submit a letter to you as to our conclusion in the light of the point he has raised about its being protection rather than a deterrent as far as partnerships are concerned.

We think the most important of the Justice Department recommendations is the proposed increase in the figure in the so-called clause (3) proviso of sections 203 and 205, where they recommend the increase from 15 days to 60 days. In fact, we would go further and recommend complete deletion of this clause (3) ban.

What that clause (3) does is to provide a bar to a special Government employee—this is sections 203 and 205—it is a ban against a special Government employee having anything to do with any matter in the department or agency in which he is employed.

Now one of the effects of this, for example, would be that a lawyer who is a member of, say, the National Advisory Council on Mental Health out in Bethesda would be unable to conduct any food and drug practice for the reason that both the National Advisory Council on Mental Health and the Food and Drug Administration are under the Department of Health, Education, and Welfare.

We think that the clause (3) ban is based on a fallacious assumption that an intermittent Government employee can effectively roam throughout a department or agency and obtain special treatment for himself in connection with matters wholly unrelated to the Government work he is doing.

But the fact is that special employees almost invariably have very specific assignments, such as attending meetings of an Advisory Committee, or working with a highly specialized task force.

And we do not feel that they do have, realistically speaking, the opportunity to roam around and seek special advantage any more than any Washington representative would have, and probably not so well.

However, the comments I have made are taken care of to a very large extent by the proposed increase from 15 to 60 days which has been recommended by the Justice Department in respect to this clause (3) ban.

Mr. Chairman, we also suggest adding a preamble to the bill, making a declaration of policy and purpose. Some statements from President Kennedy's April 27, 1961, special message were apt for this purpose. And in the bill which our committee drafted we had a preamble which pointed up the two policy considerations which I outlined at the outset.

Attached here to my testimony is exhibit D, which is suggested language for a preamble.

Mr. COLLINS. Pardon me, Mr. Perkins, wouldn't it be rather difficult to have a preamble in criminal statute?

Mr. PERKINS. I had not thought so. It did not seem to us there was any important reason or distinction from a criminal statute or any other statute in this respect.

Also, we would like to see, as recommended, that a provision be added which emphasized the administrative responsibility of the President and the heads of the Government branch agencies. So the two would perhaps go hand in hand, expanding the bill beyond a purely criminal one, and also introducing the preamble.

I will skip some of the highly technical recommendations for change which we have and move over to page 6 of my outline of testimony where we make the comment in reference to section 208.

On page 17 of the bill, in line 5, the words "business organization" appear. We believe that the word "business" should be eliminated because self-dealing in nonprofit corporations is a serious threat today.

In other words, the section 208, as it is in the bill now, pages 16 and 17, contains a ban comparable to the one in present 18 U.S.C. 434, pertaining to business organizations. And we feel that should be expanded to encompass nonprofit corporations as well.

Also, in connection with section 208 we believe that the grounds for use of the exemptive power in section 208 should be broadened. We recommended adding in line 20, after the word "employee" language as follows:

or that other circumstances exist (to be set forth in such written determination) which, in the opinion of such official, make the application of subsection (a) contrary to the national interest.

Now, the purpose of this broadening is this, that in order to find an exemption under 208 as now drawn there has to be a determination that the interest of the individual is not so substantial as to be deemed likely to affect the integrity of his services which the Government may expect from such officer or employee.

Now, we believe there are some situations in which it would be difficult to say that the interest is not substantial but where it is essential to have the exemption operate.

For example, suppose a Government consultant is an inventor who has a patent on a key element to an antimissile device, and let us further suppose there were no competing or even comparable device. His recommendations that the Government use such a device we will assume are ultimately accepted. An exemption from section 208 is needed, but it can probably not be said the inventor's interest is not substantial even if he waives all royalties.

Indeed, the inventor, under section 208, cannot even make the recommendation without obtaining an advance exemption. So in essence all we are recommending is that the standard of applicability of the exemption be broadened to go beyond just insubstantiality and include other circumstances which, in the opinion of the official making the determination, justify the use of the exemption in the national interest.

Now in connection with section 209, which is the section pertaining to compensation from outside sources, there has been, as Mr. Katzenbach testified, a very laudable improvement, or would be a laudable improvement, in the law, one which we recommended, if this section is enacted, permitting employees who come into Government from busi-

ness organizations or nonprofit organizations to continue to keep their retirement and similar security-oriented plans which benefited them outside of Government.

It is disastrous for an individual who has built up an interest in a retirement program to be forced to discontinue that for the years that he is in Government service. But there is one aspect of the change which appears in paragraph (b), starting on line 18, and on page 18, and running over to line 2 on page 19.

There is one aspect which we would like to call your attention to and that is under the wording in the House bill—

A Government employee could continue in a profit-sharing plan even as to profits of a company earned while he is in Government service.

Under Senator Keating's bill, as recommended by the bar association, there could not be participation in a profit-sharing plan as to profits of a corporation earned during the period of Government service. It is our thought that the opportunity to share in profits earned while in Government service arguably carries greater dangers even than the flat salary which is prohibited.

So we would suggest consideration be given to adding a proviso at the end of line 2, page 19, excluding profits earned while in Government service, or else adding a specific authorization for Presidential regulations in this area and then permitting the President to carve out such exceptions by regulation since there may be others as well.

As far as Senator Keating's statement this morning is concerned, we certainly, as I have indicated, applaud his desire to establish administrative procedures within the framework of this bill.

Since our committee did not tackle the problem of ex parte communications we prefer not to comment on that. We do believe he is thoroughly sound and correct in urging a study of conflict-of-interest problems for Members of Congress.

Our study specifically did not undertake that, and we believe it would be most appropriate that it be done through the machineries of the Congress itself.

And as I have indicated, on Senator Keating's fourth proposal, namely, for covering gifts, we do believe that should be done, but hope also that the bill can be enacted this year because certainly our experience, while a pleasant one, in connection with the advocacy of this bill, has been a long one. And we do think that the national interest would be served in having legislation enacted this year.

I would like to ask my colleagues, Mr. Horsky and Mr. Hoagland, if they wish to add any comments?

Mr. HORSKY. I think you have covered it very well.

Mr. HOAGLAND. I do not think so, thank you.

Mr. PERKINS. We could go into much more detail but feel this covers the main points, and a good deal has to be left, presumably, for executive session, and detailed technical work by whomever the committee wishes to designate.

Mr. HORSKY. Could I just add this, if it would be appropriate, that all of us are available at any time to help the committee with anything we can do by way of helping you prepare amendments or clarification—or clarify sections or anything of the sort. We will be glad to do it as we did in the House.

Senator HRUSKA (presiding). We may invite you back to one of our executive sessions for that purpose. I think we all agree with you that when we get into refinements in a bill which has already been passed by the House, like those which you suggest, it will take very close analysis and scrutiny. We may very likely be calling upon some of you for further consultation.

Senator Keating, have you any questions of the witness?

Senator KEATING. No. I do not think I have, Mr. Chairman.

I want to again express my gratitude to Mr. Perkins and to his associates for the assistance they have given us. However, I do not think at this point I need to ask any questions.

Senator HRUSKA. Thank you Mr. Perkins, and both of your associates, for appearing as you did today.

Mr. PERKINS. Thank you.

(Mr. Perkins complete statement is as follows:)

TESTIMONY OF ROSWELL B. PERKINS, CHAIRMAN, SPECIAL COMMITTEE ON THE FEDERAL CONFLICT OF INTEREST LAWS, THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK¹

A. IMPORTANCE OF H.R. 8140

Recruitment in a cold war era.

Protection of the Government.

Area of Government activity has greatly expanded.

Forms of venality more subtle today.

B. HUGE INVESTMENT OF WORK IN H.R. 8140

Culmination of continuous effort and study inside and outside of Congress for about 5 years. A major goal of the administration.

Lateness of the hour in Congress.

Importance of getting a bill to conference as soon as possible.

C. PURPOSES AND KEY PROVISIONS

Purposes and reasons for the bill set forth on pages 2-7 of the House Report. No need to repeat in testimony.

Key provisions set forth on pages 8-17 of the House Report. Again, no need to repeat in testimony.

The bill would carry out most of the key recommendations of the Special Committee of the Association of the Bar of the City of New York.

D. AREAS COVERED BY H.R. 8140

(1) Gifts

Gifts with intent to influence an official act are squarely covered by the bribery sections.

Most departments and agencies have regulations concerning gifts. Also, Executive Order No. 10939 (May 9, 1961) bars gifts, but is applicable only to Presidential employees. A Presidential memorandum (February 9, 1962) bars gifts for advisers and consultants.

Bar Association Committee (in 1960) concluded that gifts should be barred by an overall statute, with regulatory power in President to carve out exceptions. See language, exhibit A.

The bill, if enacted, could easily be amended in a future year to add a gifts prohibition. Suggest not delaying enactment at this time to add a gifts provision.

¹ Accompanied by Charles A. Horsky and Alexander C. Hoagland, Jr., members of the special committee. Not every member of the committee has been polled on each position taken in the testimony.

(2) Abuse of office

This is coercion by a Government official, however subtle, to induce private advantage for himself or his associates.

Not covered well by departmental regulations and not covered at all by Executive Order 10939.

Like gifts, this area was deemed appropriate (by the bar association committee) for legislation. See language, exhibit B. But this prohibition is severable from the rest of the bill and could await another year.

(3) Emphasis on administration and administrative remedies

Conflicts of interest is a day-to-day problem of employee conduct and personnel administration. Also, past emphasis on criminal law procedures makes enforcement clumsy and ineffective.

While not essential as a matter of law, we believe the bill would be strengthened by adding a section placing squarely on the President and heads of departments and agencies the responsibility for—

(a) issuing regulations not inconsistent with the statute;

(b) development of techniques for prevention of conflicts of interest, through internal information programs and reporting; and

(c) enforcement within the executive branch, including use of full range of disciplinary powers available to department and agency heads.

See recommended language, exhibit C.

E. OTHER SUGGESTED AMENDMENTS TO H.R. 8140

(1) Justice Department's proposed amendments

We support these proposed changes.

Most important of these is the proposed increase in the figure in the "clause (3)" proviso of sections 203 and 205, from 15 to 60 days. We would go further and recommend complete deletion of the "clause (3)" ban.

Clause (3) is based on a fallacious assumption, namely, that an intermittent Government employee can effectively "roam" throughout a department or agency and obtain special treatment for himself in connection with matters wholly unrelated to the Government work he is doing.

The fact is that intermittent employees almost invariably have very specific assignments, such as attending meetings of an advisory committee, or working with a highly specialized task force. They cannot seek out a supply officer, for example, with any greater degree of ease or effectiveness than any sales representative based in Washington—in fact, probably not nearly so well.

However, confining "clause (3)" to employees of over 60 days would remove most of the problem.

(2) Preamble

Suggest adding a preamble, making a declaration of policy and purpose. See statements in President Kennedy's April 27, 1961, special message, and draft language, exhibit D.

(3) Section 202

(a) Legislative history should make it clear that advisers and consultants are Government employees on days when not performing service. Thus, the distinction drawn in the Attorney General's January 31, 1962, opinion to the President would be superseded.

(b) Similarly, an amendment or legislative history should make it clear that any persons appointed to a position, no matter how infrequent the services and whether unpaid, are "employees." (Note there is no definition of Government "employee.")

(4) Section 203

(a) Services before courts should be covered, except in the case of Members of Congress.

(b) Sections 203 and 205 should be merged, as they are 90 percent coextensive.²

(c) The word "knowingly" in line 16 on page 9 should probably be eliminated. It does not appear in a comparable provision in section 209.

² Since this would require substantial redrafting, time considerations may make it desirable to leave these two sections separate for the time being.

(5) *Section 207*

(a) The word "knowingly" in line 8 on page 14 should be eliminated.

(b) There are two different phrases as to end of employment:

Page 14, line 20: "after his last employment has ceased."

Page 15, line 13: "following the termination of the latter's employment by the Government."

These two phrases should be made consistent.

(c) A provision should be added to the effect that a special Government employee's employment shall, in the absence of a term appointment or other understanding be deemed to have terminated on the last day on which he actually performed services.

(d) Paragraph (c), if not eliminated as recommended by Justice, should be amended to cover the possibility of return to Government of a former Government employee. This could be done by using in lines 13 and 14 the phrase "following the termination of the latter's employment during which the personal participation occurred."

(e) The paragraph (d) ban applicable to partners of Government employees should not be a lifetime ban, except where the Government employee remains continuously with the same department or agency. If the employee switches his department or agency, or leaves Government (perhaps returning a few years later) the paragraph (d) limitation should end as to matters worked on in the former department or agency.

Accordingly, paragraph (d) should be amended to incorporate a time limit on its applicability: the termination of the employment of the Government employee by the department or agency by which he was employed when the participation occurred.

Alternatively, the partner ban could be made to apply for a year or two following the termination of the employment with the particular department or agency.

(6) *Section 208*

(a) The word "business" in line 5 on page 17 should be eliminated. Self-dealing in nonprofit corporations is a serious threat today.

(b) The grounds for use of the exemptive power in section 208(b) should be broadened. Recommend adding in line 20, after "employee,": "or that other circumstances exist (to be set forth in such written determination) which, in the opinion of such official, make the application of subsection (a) contrary to the national interest."

Example.—A Government consultant is an inventor who has the patent on a key element to an antimissile device. There are no competing or even comparable devices. His recommendations that the Government use such a device are ultimately accepted. An exemption from section 208 is needed, but it probably cannot be said that the inventor's interest is not substantial, even if he waives royalties. Indeed, the inventor cannot even make the recommendation without an advance exemption.

(7) *Section 209*

Arguably, a Government employee should not be allowed to participate in a profit-sharing plan to the extent of sums contingent on profits earned during the period of his Government employment. This might carry greater dangers than a flat salary supplementation while in Government. Consideration should be given to adding a proviso at the end of line 2 on page 19 as to such profits, or else adding a specific authorization to the President to issue protective regulations.

EXHIBIT A

SUGGESTED LANGUAGE FOR SECTION ON GIFTS

Sec. —. GIFTS

(a) No Government officer or employee shall receive, accept, take, seek, or solicit, directly or indirectly, anything of economic value as a gift, gratuity, or favor from any person if such officer or employee has reason to believe the donor would not give the gift, gratuity, or favor but for such officer's or employee's position within the Government.

(b) No Government officer or employee shall receive, accept, take, seek, or solicit, directly or indirectly, anything of economic value as a gift, gratuity, or

favor from any person, or from any officer or director of such person, if such officer or employee has reason to believe such person—

(1) has or is seeking to obtain contractual or other business or financial relationships with the agency of such officer or employee; or

(2) conducts operations or activities which are regulated by such agency; or

(3) has interests which may be substantially affected by such officer's or employee's performance or nonperformance of official duty;

Provided, however, That this paragraph (b) shall not apply to gifts to a special Government employee by his own employer.

(c) Exceptions to subsections (a) and (b) may be made by regulations issued by the President or the head of an agency in situations where the circumstances do not lead to the inference that the official judgment or action of the officer or employee receiving, directly or indirectly, the gift, gratuity, or favor was intended to be influenced thereby.

EXHIBIT B

SUGGESTED LANGUAGE FOR SECTION ON ABUSE OF OFFICE

Sec. —. ABUSE OF OFFICE

Except in the course of his official duties or incident thereto, no Government officer or employee shall, in his relationships with any person specified in the succeeding sentence, use the power or authority of his office or position within the Government in a manner intended to induce or coerce such other person to provide such officer or employee or any other person with anything of economic value, directly or indirectly. This section shall apply to relationships with any person, or any officer or director of such person, from whom such Government officer or employee (including a special Government employee) would be prohibited by the provisions of section — (b)¹ from receiving a gift.

EXHIBIT C

SUGGESTED LANGUAGE FOR SECTION ON ADMINISTRATION

Sec. —. ADMINISTRATION

(a) The President and agency heads shall issue such regulations consistent with the provisions of this Act as may be necessary or appropriate to carry out the policies and purposes of this Act.

(b) In addition to enforcement by criminal procedures, and as a supplement thereto but not in derogation thereof, each agency head shall be responsible for the administration and enforcement within his agency of this Act and the regulations issued hereunder in accordance with established disciplinary procedures. The agency head may dismiss, suspend or take such other action as may be appropriate in the circumstances in respect of any officer or employee of his agency upon finding that such officer or employee has violated this Act or regulations promulgated hereunder. The procedures for any such action shall correspond to those applicable for disciplinary action for employee misconduct generally, and any such action shall be subject to judicial review to the extent provided by law for disciplinary action for misconduct of employees of the same category and grade.

(c) Agency heads may establish by regulation procedures for the purpose of preventing violations of this Act and the regulations issued hereunder, including, but not limited to, reasonable requirements as to the periodic filing of appropriate statements, reports and certifications by officers and employees of the agency and by persons appearing before or dealing with the agency.

¹ Insert appropriate number for section dealing with gifts. See exhibit A.

EXHIBIT D

SUGGESTED LANGUAGE FOR PREAMBLE

PREAMBLE; DECLARATION OF POLICY AND PURPOSE

(a) The proper operation of a democratic government requires that officials be independent and impartial; that government decisions and policy be made in the proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. The attainment of one or more of these ends is impaired whenever there exists, or appears to exist, an actual or potential conflict between the private interests of a government employee and his duties as an official. The public interest, therefore, requires that the law protect against such conflicts of interest and establish appropriate ethical standards with respect to employee conduct in situations where actual or potential conflicts exist.

(b) It is also fundamental to the effectiveness of democratic government that, to the maximum extent possible, the most qualified individuals in the society serve its government. Accordingly, legal protections against conflicts of interest must be so designed as not unnecessarily or unreasonably to impede the recruitment and retention by the Government of those men and women who are most qualified to serve it. An essential principle underlying the staffing of our governmental structure is that its employees should not be denied the opportunity, available to all other citizens, to acquire and retain private economic and other interests, except where actual or potential conflicts with the responsibility of such employees to the public cannot be avoided.

(c) It is the policy and purpose of this Act to promote and balance the dual objectives of protecting Government integrity and of facilitating the recruitment and retention of the personnel needed by Government, by prescribing essential restrictions against conflicts of interest in the executive branch of the Government without creating unnecessary barriers to public service.

Senator HRUSKA. Off the record.

(Discussion off the record.)

Senator HRUSKA. Gentlemen, I am told that there is a live quorum. The committee will stand in recess and will seek permission to sit this afternoon.

(Whereupon, at 12:30 p.m., the hearing was recessed, to reconvene at 2 p.m., on the same day.)

AFTERNOON SESSION

Senator KEATING (presiding). The subcommittee will come to order.

We will first hear Mr. Raoul Berger, chairman of the section on administrative law of the American Bar Association.

Mr. Berger, we welcome you here. And we would like to have the benefit of your views.

STATEMENT OF RAOUL BERGER, ESQ., CHAIRMAN, SECTION OF ADMINISTRATIVE LAW, AMERICAN BAR ASSOCIATION

Mr. BERGER. I am authorized to appear on behalf of the American Bar Association, and I want to thank you for the privilege of appearing before you.

I had originally prepared a brief statement, but when I heard the testimony this morning I thought it would be better if I would try to extemporize it.

Senator KEATING. We will be very glad, if you have a prepared statement, to put it in in full at the close of your testimony.

Mr. BERGER. It is not important enough. I believe I can convey to you orally what I had in mind.

First, may I congratulate the committee for coming to grips with this sprawling, antiquated mass of statutes which are sadly in need of overhauling. They reach too far, as you know, in some cases, and they don't reach far enough in others.

Now, the association preferred the Senate bill 1902 to H.R. 8140. And this preference was based on two grounds. The first ground resembles an amendment you proffered this morning to S. 1902, Senator Keating, providing for administrative machinery.

You spoke of enforcement machinery. We considered that conflicts of interest are better handled through administrative clearance machinery such as that used by the Treasury Department, and recently adopted by the Atomic Energy Commission. We consider that this is better than resort to criminal prosecution, which is sometimes much too harsh, and always cumbersome and subject to the infirmities you mentioned. And we would strongly advocate, Senator, that greater emphasis be given to administrative clearance machinery. The problem is twofold: one, governmental relations of men presently in the Government; two, finding an expedient and sensible way of dealing with ex-Government employees who aren't quite sure whether they are entitled to appear or not before any court or agency, for which process administrative machinery such as advisory opinions is far better suited.

Now, a second reason why we preferred S. 1902 was tangentially stated by Mr. Perkins this morning. S. 1902 has an excellent statement of principles in the preamble. And whenever there are doubts as to the meaning of a complicated statute, it has been our experience that you profit from having a comprehensive statement of principles to look to for guidance. So we would suggest to you, Mr. Chairman, that criminal statute or not—and if you follow your own thought and our recommendation, it should be a mixed criminal statute and administrative clearance statute—you would benefit from having a compact statement of principles patterned after that in S. 1902.

Now, we agree with Mr. Katzenbach in recommending the elimination of section 207(b) of H.R. 8140, which would completely bar a former Government employee for 2 years after termination of his employment from appearing before any court or agency in a manner “which was under his official responsibility” during his employment. And we agree with the Department of Justice that this subsection—

would unfairly impair the private employment opportunities of many non-career Government officials who may have had responsibility for a broad area of Government operation, but no personal or substantial participation in a vast number of particular matters for which they were ultimately responsible.

As you know, Mr. Chairman, in many agencies the top officials or those close to the top have a perfect flood of papers that float in front of them, so that they have to sign merely in reliance on an OK by some subordinate. Some documents that they don't even see are signed by subordinates. And this sort of official responsibility is simply too large for the net to catch.

We concur with the Department of Justice that section 207(a) provides adequate protection for the Government, since it embodies the rule of ethics expressed in canon 36 of the Canons of Professional Ethics, the rule against switching sides—this has worked for generations in the law, and we think it would work equally well in Government.

One may be "officially responsible" as a high official in an official matter and yet in fact have no contact with it whatever. To elect to bar such an individual from later representation of private persons in such circumstances is to ignore realities.

We disagree, however, with Mr. Katzenbach in recommending the elimination of section 207(c), the partner section. And I presume he would have the same thing to say about section 207(d). This matter was canvassed before the board of governors of the ABA and the suggestion that 207(c) be deleted was rejected.

Congressman Lindsay this morning justly urged that section 207(c) be retained. A partner of a former employee of the Government should not for 2 years at least—and that is what is provided—be permitted to do what the former employee is prohibited from doing. To permit the partner to do it is to encourage behind-the-scenes evasion of the prohibition. It is something that would be unseemly for any lawyer.

We recommend also that the classification of Government employees for conflict-of-interest purposes should be based solely on their status as full-time or part-time employees, and not on any other basis. And we recommend that all existing exemptions to the present conflict-of-interest statute should be repealed, for, as the President said on April 27 of 1961, the resulting hodgepodge of exemptions seriously weakens the integrity of the Government personnel system.

We should also like to recommend to you the inclusion within H.R. 8140 of National-State committeemen and officers of a political party. Without mentioning names, you will recall, Senator, from time to time very high officers of the parties have been found in positions that were embarrassing, to say the least. The national chairman of a party is in a position to exert great influence, and he too should be removed from temptation and placed beyond suspicion.

Senator KEATING. Would you extend that to all the members of the national committees of both parties?

Mr. BERGER. Well, I would be tempted to do so.

Senator KEATING. Would you extend it to the State chairmen in the various States?

Mr. BERGER. I believe we had a resolution that dealt with the question some 7 or 8 years ago at the time when the thing was raised. And I believe we felt that it should be the State committeemen too, the members of the National Committee. How far down to go, Mr. Chairman, is a matter of judgment, and you would be far wiser than we. But it has been a real problem in the past, and we raise it now, because this is a comprehensive revision, and we were deficient in coverage in this area, and this would be the right time to do it.

Now, may I add finally, the Section on Taxation of the American Bar Association expects to submit some technical advice respecting H.R. 8140 which the staff will doubtless wish to consider.

(This memorandum has been received and made a part of the committee files.)

Mr. BERGER. While we preferred S. 1902 for the reasons I have given you, we would be happy to endorse H.R. 8140 if you could make the changes that you have suggested and that I have enumerated, the changes that were suggested by Mr. Katzenbach, by Mr. Perkins, and by Congressman Lindsay.

I want to thank you very much for the privilege of appearing before you.

Senator KEATING. Thank you, Mr. Berger. You have been very helpful.

Mr. BERGER. If you have any questions I will be glad to answer them.

Senator KEATING. Counsel?

Mr. COLLINS. You are speaking for the ABA, Mr. Berger?

Mr. BERGER. I have been authorized to come here on behalf of the ABA.

Mr. COLLINS. If the committee does take action on H.R. 8140 with or without the amendments that have been suggested, the ABA is for H.R. 8140 in principle?

Mr. BERGER. Let me phrase it a little differently. We would wholeheartedly endorse H.R. 8140 with the changes with I have enumerated. And I don't think that the ABA would oppose H.R. 8140 in any event. We are disturbed, now that the time has come for a wholesale revision, about having to continue to deal with this matter exclusively within the criminal framework. We think, Senator—we didn't know that you independently were taking that view—but we canvassed it very seriously and patiently, and we feel it is a mistake to put this almost exclusive emphasis on criminal processes. I know from my own law experience in Government that that is not the way to do it.

I know that with these changes we would wholeheartedly jump on the band wagon of H.R. 8140. As it now is, oh, we won't be opposed to it, let's put it that way.

Mr. COLLINS. Then, in the framework of the various amendments that have been suggested——

Mr. BERGER. In that framework we would want to get behind you with whatever help we can give you through our various journals of publicity, and whatever we can do, I am sure we would be glad to do.

Mr. COLLINS. Thank you very much, Mr. Berger.

Senator KEATING. I agree with you that the most important amendment that I have suggested is the one to provide for an administrative procedure, as the President indicated he felt was desirable in April. I do not agree with the statement that it is covered by present law, I think that it is necessary to broaden the present provision of law somewhat to give the authority to proceed administratively.

And I hope very much that the committee will see fit to adopt at least that.

Mr. BERGER. I would add, even if the suggestion that it is presently covered has more merit than you attribute to it, that this is an occasion to clear up any obscurity, any problems about it.

I may say, Mr. Collins, while we suggest incorporation of a statement of principles, this is something that we don't attach quite as much weight to as administrative clearance machinery, which seems to us of the highest importance. And I think it would be unjust to preserve 207(b) with its vast "official responsibility," because many of the finest men that you have to draw into the Government never have personal contacts with problems over which they have official responsibility, and it is utterly unfair and unjust to them, and impairs recruitment of the ablest men.

Thank you.

Senator KEATING. Thank you, Mr. Berger.

Admiral Houser of the Retired Officers Association.

Admiral, we are glad to welcome you here.

STATEMENT OF ADM. HAROLD A. HOUSER (RETIRED), RETIRED OFFICERS ASSOCIATION, WASHINGTON, D.C.

Admiral HOUSER. Mr. Chairman, I have a prepared statement, which I believe you have a copy of, sir.

Senator KEATING. You are free to handle it any way you want to. You may read your statement, or it will be made a part of the record, and you may summarize it and proceed in whatever fashion you wish.

Admiral HOUSER. With your kind permission, I should like to read it; it is only seven pages long.

I am Rear Adm. Harold A. Houser, U.S. Navy, retired, legislative counsel of the Retired Officers Association, with headquarters in this city.

The association consists of over 50,000 members, representing retired officers of all of the seven uniformed services, including both Regulars and Reserves. The association is grateful for the opportunity to present its views on the important and involved matter of the conflict of interest statutes.

In connection with the need for a revision of such statutes, the attention of the committee is, respectfully, invited to a recent publication of the Navy Department (NAVEXOS P-1778 (9-57)), entitled "Reference Guide to Employment Activities of Retired Naval Personnel." In analyzing the conflict of interest statutes this publication, on page 18, states, in part, as follows:

Of all the laws mentioned in this pamphlet, these criminal statutes are the most ambiguous and it is often extremely difficult to predict with any degree of certainty whether proposed activities will violate these provisions.

In view of this situation, the association wishes to compliment the committee on scheduling hearings on the bill, H.R. 8140. It is our opinion that—with an amendment which we will suggest—enactment of the bill, H.R. 8140, would clarify and improve the laws designed to prevent conflict of interest by Federal employees and former employees, including retired officers of the uniformed services.

In the discussion on the floor of the House of Representatives, during the consideration of the above bill, the distinguished chairman of the House Judiciary Committee, in presenting the bill, stated, in part, as follows:

The bill makes no change whatever in existing law affecting retired officers of the Armed Forces (p. 13741, Congressional Record, Aug. 7, 1961.)

The bill specifically deals with retired officers in two places. The first of these is in section 206, which reads as follows:

SEC. 206. EXEMPTION OF RETIRED OFFICERS OF THE ARMED FORCES.

Sections 203 and 205 of this title shall not apply to a retired officer of the Armed Forces of the United States while not on active duty and not otherwise an officer or employee of the United States, or to any person specially excepted by Act of Congress.

The above section would, if allowed to become operative, accomplish one of the basic objectives of the Retired Officers Association. However, we find that the above provision in the bill is completely nullified in section 2, which states:

Sections 281 and 283 (except as they may apply to retired officers of the Armed Forces of the United States) * * * are repealed and will respectively be supplanted by sections 203 and 205. * * *.

The Retired Officers Association recommends that the bill be amended by deleting the underscored words in section 2, quoted above, for reasons which we will present in justification therefor.

Retired officers of the Regular service, along with other citizens, are subject to all the criminal statutes which provide penalties for wrongdoing in dealing with the Government. In addition, however, unless our suggested amendment is adopted, they will continue to be subjected to a prohibition against dealing with the Government, irrespective of whether or not those dealings are proper or in violation of the criminal code. In other words, they would continue to be subjected to a specific restriction not applicable to others.

This restriction is found in section 281 of the Criminal Code which prohibits, among other things, retired officers of the Regular military services from making sales to the Department under which they hold retired status, under penalty of \$10,000 fine or 2 years in prison, or both. Unless the association's amendment is incorporated in the bill, such officers will continue to be singled out for discriminatory treatment. In this connection it is submitted that sales to the Government are not *malum in se*. On the contrary, sales to the Government, contracts with the Government, negotiations concerning contracts with the Government are, as a general rule, in the best interest of all concerned. Actually, when done in accordance with approved standards and in compliance with the laws concerning these activities, they are essential activities, especially necessary at this time with the billions of dollars in contracts for defense made necessary by the world situation.

It is believed that the situation which our proposed amendment would modify was brought about, at least in part, as a result of the lack of a complete appreciation of the status occupied by a Regular retired officer of the uniformed services. He does not, of course, exercise any authority by virtue of his status as a retired officer (unless recalled to active duty as is the case in a national emergency.)

House Report No. 2330, 76th Congress (pp. 2-4), has this to say on the point in question:

Though a part of the Military Establishment, retired (Regular) officers not on active duty—the only class to which this bill applies—are more nearly in a civil than a military status. They have no military duties to perform, and though in time of war they may be called to duty without their consent, this is a contingency to which every citizen is subject. In time of peace their status is no different from that of citizens, generally, and, as said by the court of appeals, their “activities are wholly separated from official life.” It is absurd, therefore, to think that retired officers, particularly while not on active duty, as such, can exert any undue influence in the departments or bureaus, * * *.

Chairman Vinson of the House Armed Services Committee, in 1959, designated a subcommittee to study the overall question of the employment of retired officers. The subcommittee made an exhaustive study in this field. During the course of the debate on the bill result-

ing from this study (April 6, 1960), Congressman Vinson made an observation pertinent to the statement contained in the House report referred to above, relative to the possibility of any undue influence being exerted by retired officers (Congressional Record No. 63, p. 6947, 1960). On this occasion, he stated, in part, as follows:

The subcommittee, after inviting every Member of the House to testify, and after hearing the testimony of Members and others, did not disclose a single instance in which an officer, retired from the military service, had exercised influence on someone in Government to the extent that the product manufactured by his company was selected.

No evidence of improper use of influence was disclosed.

It is desired to point out that there do not exist any restrictions in the criminal code prohibiting business activities of Reserve officers of the uniformed services.

This is because the Armed Services Reserve Act of 1952, and former laws, specifically provide that no Reserve officer of any of the Reserve components will, by reason of his status as such, when not on active duty, be restricted from any business activity or employment to which he would otherwise be eligible. These statutes have, very properly, been enacted to protect the rights of retired Reserve officers to be employed both by the Federal Government and in private business activities against loss of such rights to which they are otherwise entitled as citizens of the United States.

Why retired officers of the Regular services have, over the years, been singled out for the imposition of restrictions upon their business opportunities is not clear. Why it should be imputed to them that they as a class might be expected to engage in overreaching activities in their dealings with the military personnel with whom they formerly served on active duty and, at the same time, other classes of Government employees, including civilian and military personnel in the Reserve components, would be aloof from any such activities is, likewise, not clear.

The association is convinced that the proposed new sections of the criminal code relating to postemployment of former officers and employees would be adequate to cover the conduct of all former active personnel of the Government, including retired officers of the Regular military services. There appears to be no occasion to have special restrictive laws applicable, solely, to retired officers of the Regular uniformed services.

The association feels that to deny our defense industries the talents and experience of retired officers of the Regular military services in connection with the manufacture, production, and use of the modern weapons and devices needed in our national defense effort, especially at this time, is not in the national interests. To permit their employment and circumscribe their opportunity to discuss these matters with those with whom they have formerly served renders them, to that extent, ineffective.

The effect of the amendment we propose would be to remove unnecessary restrictions and make the services of all former active personnel of our Government, civilian and military, fully available to the end that every citizen can make his contribution to the preservation of our institutions. This is entirely aside from the injustice of imposing restrictions upon honorable people who wish to make such

contributions and to limit, unnecessarily, their legitimate opportunities according to their talents and experience to provide for their families after retirement. The detrimental morale factor, alone, upon those who devote themselves to professional military careers, which include much in the way of personal sacrifice should, in the opinion of the association, be one of the matters of deepest concern to the committee and every Member of Congress—and we are confident it will.

Enactment of the bill, H.R. 8140, amended as suggested; namely, by deleting in section 2 “(except as they may apply to retired officers of the Armed Forces of the United States)”, would bring retired officers of the military services into conformity with other Federal retirees with respect to the activities in which they may properly engage. It will, thus, render such officers no more subject to the laws involved than are all other classes of Federal retired personnel and former Federal employees, including Federal civil service annuitants, former Foreign Service personnel, and retired officers of the Reserve components of the military services. The enactment of the pending legislation will, however, apply equally to retired officers of the Regular services and require of them the same high measure of integrity and responsibility in their dealings with the Federal Government which must be expected and required of all citizens and other persons in the United States, a quality of character which our career military officers possess to a very high degree.

The Retired Officers Association understands that a statement will be presented to the committee on behalf of the Commissioned Officers Association of the Public Health Service and the Association of Commissioned Officers of the Coast and Geodetic Survey, with reference to a change in the phraseology of proposed new section 206 of title 18 of the code, which appears beginning at line 20 of page 13 of the bill. Those associations will recommend that the term, “armed services,” appearing on line 20, page 13 of the bill and also in the text under said section 206 on line 22 of the bill, be changed to the term, “uniformed services,” so that the application of the exemption contained in the proposed section will apply uniformly to all members of the uniformed services (Army, Navy, Air Force, Marine Corps, Coast Guard, Public Health Service, and Coast and Geodetic Survey). The Retired Officers Association concurs in this proposed amendment.

The association urges enactment of the bill, H.R. 8140, including the amendment previously suggested.

Senator KEATING. The phrase “uniformed services” is a word of art taken to mean the ones designated in your statement?

Admiral HOUSER. Mr. Chairman, what it really does is to add the Public Health Service and the Coast and Geodetic Service, that is the only change.

Senator KEATING. Thank you very much, Admiral, we appreciate the benefits of your views.

Admiral HOUSER. Thank you, Mr. Chairman.

Senator KEATING. We will hear F. O. Willenbucher, Commissioned Officers Association of the Public Health Service, and Association of Commissioned Officers of the Coast and Geodetic Survey.

STATEMENT OF FRANZ O. WILLENBUCHER, CAPTAIN, U.S. NAVY (RETIRED), NATIONAL COUNSEL OF THE COMMISSIONED OFFICERS ASSOCIATION, PUBLIC HEALTH SERVICE, AND THE ASSOCIATION OF COMMISSIONED OFFICERS, COAST AND GEODETIC SURVEY

Captain WILLENBUCHER. Mr. Chairman, I should like to read my statement, so I can keep strictly to what I have to say.

My name is Franz O. Willenbucher, captain, U.S. Navy, retired, national counsel of the Commissioned Officers Association, Public Health Service, and the Association of Commissioned Officers, Coast and Geodetic Survey, hereinafter called "the associations."

The Commissioned Officers Association, Public Health Service, consists of approximately 3,000 members, which number includes more than 75 percent of the career active duty personnel of that service, and the Association of Commissioned Officers, Coast and Geodetic Survey, consists of practically all of the career active duty personnel of that service. These organizations are pleased to have the opportunity to appear before the committee to present their views on the bill (H.R. 8140) to strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes.

The associations desire strongly to urge upon the committee two changes in this proposed legislation. The first has reference to proposed new section 206 of title 18 of the United States Code, contained in section 1 of the bill, beginning at line 21 of page 13.

Proposed new section 206 is quoted as follows:

§ 206. EXEMPTION OF RETIRED OFFICERS OF THE ARMED FORCES

Sections 203 and 205 of this title shall not apply to a retired officer of the *Armed Forces* of the United States while not on active duty and not otherwise an officer or employee of the United States, or to any person specially excepted by Act of Congress. [Emphasis supplied.]

This proposed new section of title 18 of the United States Code would, if enacted as now contained in the bill, exempt retired officers of the Armed Forces from the effect of the proposed new sections 203 and 205 of title 18.

Included with the Armed Forces (Army, Navy, Air Force, Marine Corps, and Coast Guard) in much legislation are the Public Health Service and the Coast and Geodetic Survey. All seven of these services constitute the uniformed services. If the language now included in the bill were enacted, it would, presumably, leave retired officers of the Public Health Service and the Coast and Geodetic Survey subject to the provisions of proposed new sections 203 and 205, since these two services are not now included within the term "Armed Forces."

In view of this, and because it is manifestly apparent that it is not intended to include retired officers of the Public Health Service and the Coast and Geodetic Survey within the restrictions contained in the proposed two new sections of the code to any greater extent than those in the "Armed Forces," it is strongly urged that the term "Armed Forces," contained in the title of proposed section 206 on line 20 of page 13 of the bill and in the text under that title on line 22 of page 13 of the bill, be changed to read "uniformed services."

The words "uniformed services" are words of art in various laws which deal with these services, as including all seven of the uniformed services. The inclusion of this term in the two places indicated would place all seven of the uniformed services on the same basis of exemption intended to be accomplished by the provision in question with reference to retired officers in general.

The second change which the associations desire strongly to urge upon the committee is the removal of the parenthetical matter contained in lines 22, 23, and 24 of page 20 of the bill; namely, "(except as they may apply to retired officers of the Armed Forces of the United States)."

The associations are aware that the same recommendation is being made to this committee by the Retired Officers Association. They desire to state that they endorse the reasons set forth in the statement present on behalf of the Retired Officers Association and fully support its recommendation in this matter.

The bill before the committee deals, in part, with legislation to codify and redefine limitations upon the opportunity of various types of former employees of the Federal Government to act as counsel, attorney or agent (other than for the United States or any department or agency thereof) in relation to any proceeding or other matter before the agency in which he held office or was employed or assigned to duty, or in relation to any proceeding to which such agency, or any officer or employee of such agency by reason of his office or employment, or the United States on behalf of such agency, is a party.

The associations recognize the necessity for reasonable restrictions upon the activities of persons who serve or have served in the Government with respect to the representation of others in matters connected with their former office or employment, such as is now proposed in this bill.

In our laws, where the term "officer of the Government" or a similar term is used, such terms include retired officers of the Regular military services, in inactive status, since they have been, administratively and judicially, held to be "officers of the Government" within the meaning of such terms.

One administrative decision in which it was held that retired officers remain officers of the Government is found (in 29 Op. Atty. Gen. 397 (1912)) where it was held that an officer of the U.S. Army or Marine Corps, retired from active service only, and not wholly retired from service, is an officer in the employ of the Government, and so within the prohibition of what is now section 281 of title 18 of the code.

A judicial determination that a retired officer remains an officer of the Government was the case of *Morgenthau v. Barrett*, in the Court of Appeals, District of Columbia in 1939, reported (in 108 F.2d 481), where it was held that a retired Army officer could be denied admittance to practice as attorney before the Treasury Department as an "officer in the employ of the United States" under what is now section 281 of title 18 of the code.

If the parenthetical matter, contained in lines 22, 23, and 24 of page 20 of the bill, the removal of which is recommended, is kept in this legislation and enacted, the effect would be that retired officers of the regular services of the Armed Forces of the United States would be the only class of Federal employees prohibited, under the restrictions

contained in present section 281 of the Criminal Code, for the rest of their lives after retirement, from engaging in sales to the department under which they hold retired inactive status. No other retired person, military or civilian, is now, or will be when this legislation is enacted, subject to those restrictions. All retired persons will, if the pending legislation is enacted, be subject to the provisions contained therein, if they come within the jurisdictional definitions of the proposed new sections of the Criminal Code contained in the pending legislation. This would be true of retired officers of the Regular uniformed services. In other words, the parenthetical matter, if kept in the legislation, would create discriminations against retired officers of the Armed Forces, not in active service, as a class, as compared to all other retired Federal personnel, civilian and military.

The pertinent language, contained in the second paragraph of section 281 of title 18 of the United States Code, is quoted as follows:

Retired officers of the Armed Forces of the United States, while not on active duty, shall not, by reason of their status as such, be subject to the provisions of this section. Nothing herein shall be construed to allow any retired officer to represent any person in the sale of anything to the Government through the department in whose service he holds a retired status.

Under this provision, at the present time, retired officers of the regular services of the Armed Forces of the United States, even though not in active service, may not now engage in sales to the Government through the department under which they hold retired status. They are thus barred for the rest of their lives from what all others are entitled to do.

This is not true of retired officers of the Reserve components of the Armed Forces, for, under section 30r(d) of title 5 of the United States Code, it is stated as follows:

(d) When he is not on active duty, or when he is on active duty for training, a Reserve is not considered to be an officer or employee of the United States or a person holding an office of trust or profit or discharging any official function under, or in connection with, the United States because of his appointment, oath, or status, or any duties or functions performed or pay or allowances received in that capacity (Aug. 10, 1956, ch. 1041, sec. 29, 70A Stat. 632, amended Sept. 2, 1958, Public Law 85-861, sec. 13, 72 Stat. 1557; June 30, 1960, Public Law 86-559, sec. 7, 74 Stat. 282; Oct. 4, 1961, Public Law 87-378, sec. 7(a), 75 Stat. 809).

Prior statutes to the same effect, since repealed, include the act of May 12, 1917 (ch. 12, 40 Stat. 72, amended July 1, 1947, ch. 192, sec. 1(b), 61 Stat. 238); act of June 25, 1938 (ch. 690, sec. 4, 52 Stat. 1176); act of July 9, 1952 (ch. 608, pt. VIII, sec. 804(a), 66 Stat. 506).

The purpose of the second paragraph of section 281 of title 18 of the code, quoted above, was stated (in H. Rept. No. 2330, 76th Cong., 3d sess., pp. 2-4 (1940)), as follows:

The only effect of this bill will be to extend to retired officers not on active duty the same exemptions from the operations of section 113 (Criminal Code of 1909; now 18 U.S.C. 281) as were extended to Reserve officers by the act of July 1, 1930 (46 Stat. 841) (now 70A Stat. 632; 5 U.S.C. 304 (d)). * * *

* * * * *

Though a part of the Military Establishment, retired officers not on active duty—the only class to which this bill applies—are more nearly in a civil than a military status. They have no military duties to perform, and though in time of war they may be called to duty without their consent, this is a contingency to which every citizen is subject. In time of peace their status is no different from that of citizens, generally, and, as said by the court of appeals, their “activities

are wholly separated from official life." It is absurd, therefore, to think that retired officers, particularly while not on active duty, as such, can exert any undue influence in the departments or bureaus, * * *.

Thus, it appears that the 1940 amendment had for its purpose extension to retired officers of the regular services of the Armed Forces, when not in active service, certain exemptions from the restrictions contained in section 281 of title 18 of the code, to which retired officers of the Reserve components of the Armed Forces were then entitled. As outlined above, due to additional laws subsequently enacted, which had the effect of entirely removing retired officers of the Reserve components of the Armed Forces from the restrictions contained in this law, the same situation now exists which existed in 1940; namely, that retired officers of the Regular services of the Armed Forces are still subject to restrictions which, since the 1940 amendment, have not been applicable to their counterparts in the Reserve components of the Armed Forces—restrictions which in no way apply to any other group of Federal retired personnel, civilian or military, when not actively engaged in employment by or service to the Federal Government.

There is a very important additional consideration. Retired officers of the regular uniformed services are, during the 2 years next after their retirement, prohibited from receiving their retired pay, if during that period they are engaged in the selling of or contracting for the sale of or negotiating for sale of to any agency of the Department of Defense, the Coast Guard, the Coast and Geodetic Survey, and the Public Health Service, any supplies or war materials. (The applicable statute is 67 Stat. 437; 5 U.S.C. (Supp. IV) 59c (1953)):

No payment shall be made from appropriations in any act to any officer on the retired lists of the Regular Army, Regular Navy, Regular Marine Corps, Regular Air Force, Regular Coast Guard, Coast and Geodetic Survey, and Public Health Service for a period of 2 years after retirement who, for himself or for others, is engaged in the selling of or contracting for the sale of or negotiating for the sale of to any agency of the Department of Defense, the Coast Guard, the Coast and Geodetic Survey, and the Public Health Service any supplies or war materials.

Thus, there is a 2-year period, sometimes called a cooling-off period, involving the same restriction contained in section 281 of title 18 of the code. This would appear to be an adequate restriction properly to regulate the situation, assuming that any restriction in the wisdom of Congress is necessary.

The pertinent language, contained in the second paragraph of section 283 of title 18 of the United States Code, is quoted as follows:

Retired officers of the Armed Forces of the United States, while not on active duty, shall not, by reason of their status as such, be subject to the provisions of this section. Nothing herein shall be construed to allow any such retired officer, within 2 years next after his retirement, to act as agent or attorney for prosecuting or assisting in the prosecution of any claim against the United States involving the department in whose service he holds a retired status, or to allow any such retired officer to act as agent or attorney for prosecuting or assisting in the prosecution of any claim against the United States involving any subject matter with which he was directly connected while he was in an active duty status.

This language, contained in this existing law, includes, in general, the same restrictions contained in proposed new section 207 of the pending bill. Therefore, if the pending bill is enacted into law, there would seem to be no occasion for a retention of the above-quoted

paragraph specifically with reference to retired officers of the regular services of the Armed Forces of the United States.

To retain this provision would render such officers the only class of Federal retired employees, civilian or military, subject to two parallel criminal laws prohibiting the identical conduct involved with precisely the same penalties; namely, \$10,000 fine or imprisonment for not more than 2 years, or both. The retention of the effectiveness of section 283 of the Criminal Code with reference to retired officers of the regular services of the Armed Forces is, therefore, apparently unnecessary. Consequently, it is apparent that the inclusion of the parenthetical matter, contained in lines 22, 23, and 24 of page 20 of the bill, is not necessary with reference to present section 283 of title 18 of the code, since retired officers of the regular Armed Forces of the United States will be under the prohibitions in the new section 207 of the pending bill, when enacted, as they are presently restricted under the existing law.

The associations wish again to thank the committee for having been permitted to present their views. They wish to assure the committee that they support the maintenance of all necessary protections to the interests of the Government and that their recommendations have been made with that in mind.

That concludes my statement.

For convenience, I attach an appendix which contains specifically the two recommendations.

(The appendix referred to is as follows:)

APPENDIX

CHANGES IN H.R. 8140 RECOMMENDED BY THE COMMISSIONED OFFICERS ASSOCIATION OF THE PUBLIC HEALTH SERVICE AND THE ASSOCIATION OF COMMISSIONED OFFICERS OF THE COAST AND GEODETIC SURVEY

(1) That the term "Armed Forces" contained in the title of new proposed section 206 of the Criminal Code in line 20, page 13 of section 1 of the bill and in the text of said proposed new section 206, contained in line 22, page 13 thereof, be changed to read "uniformed services" so that the said proposed new section 206 will read as follows:

"§206. EXEMPTION OF RETIRED OFFICERS OF THE UNIFORMED SERVICES

"Sections 203 and 205 of this title shall not apply to a retired officer of the uniformed services of the United States while not on active duty and not otherwise an officer or employee of the United States, or to any person specially excepted by Act of Congress."

(2) That the parenthetical matter, contained in lines 22, 23, and 24 of page 20 of the bill; namely, "(except as they may apply to retired officers of the Armed Forces of the United States)" be stricken from the bill.

ARE REGULAR RETIRED OFFICERS "DIFFERENT" FROM OTHER RETIRED OFFICERS?
(A commentary on H.R. 8140, prepared for the Senate Committee on Judiciary)

A careful review of Report No. 748 accompanying H.R. 8140 warrants the closest attention of the Committee on Judiciary. On page 10, subparagraph (e) states that: "Under present law, retired officers of the Armed Forces of the United States, while not on active duty, occupy a peculiar and complex position * * *. The problems involved in the peculiar status of retired officers of the Armed Forces, while not on active duty are of a complexity that requires further specialized study for solution. The committee therefore determined to omit this class of persons from the bill * * *."

It is respectfully submitted that a careful reading of the introductory matter in this same report will indicate that the historical situation which is outlined as the incentive for action leading to H.R. 8140 in relationship to all other Government employees is exactly, in essence, the situation which causes the "complexities" in the case of retired officers of the Armed Forces. The only differences are in the specific details, and not the principles at all.

If the words of the report concerning uniformity, fairness, equality, and justice are to be applied across the board, it is submitted that there are no germane reasons that one relatively small category of former Government employees should be excluded from the benefits of this bill which brings sense out of the confusion which is recognized in the instance of all former Government employees as well as retired armed services officers.

The purpose of the bill as stated on page 2 is:

"The purpose of the bill is (1) to strengthen, revise, and simplify existing Federal conflict-of-interest laws, (2) to make appropriate general provision for consultants and temporary employees in the executive branch, the independent agencies and the District of Columbia, and (3) to integrate these conflict-of-interest laws with recodified prohibitions of bribery and graft—all to the end that improper and unethical practices will be prevented without depriving the Government of the services of competent and conscientious men and women."

Query: Would the purpose of this bill be violated or weakened if Regular Retired Officers of the armed services were included in its provisions?

Page 2 of the House report starts discussing the topic "reasons for the bill."

Direct quotes from a 1958 Subcommittee 5 of the Committee on the Judiciary are used:

"Existing conflict-of-interest law comprises overlapping, inconsistent, and incomplete provisions. * * *"

A quote from a 1960 study by a special committee on Federal conflict-of-interest laws of the Association of the Bar of the City of New York is also used:

"The statutory law—most of it a century old—is not broad enough to protect the Government against the manifold modern forms of conflict of interest."

Although a negatively stated proposition, the sentence recognizes the ancient vintage of some of these laws, and injects realistically the changing times as a salient element dictating the need for the change.

Query: Do these same general principles not apply to those laws affecting retired officers?

The President, forwarding the New York report to the Congress, is quoted in the House report on page 3. He stated:

"Five of these statutes were enacted before 1873. Each was enacted without coordination with any of the others. (1) No two of them use uniform terminology. (2) All but one impose criminal penalties. (3) There is both overlap and inconsistency. (4) Every study of these laws has concluded that, while sound in principle, they are grossly deficient in form and substance. (5) 'The fundamental defect of these statutes as presently written is that: On the one hand, they permit an astonishing range of private interests and activities of public officials which are wholly incompatible with the duties of public office; (6) on the other hand, they create wholly unnecessary obstacles to recruiting qualified people for Government service. (7) * * *' (8) * * *"

(1) The President's report obviously does not refer to the other statutes affecting solely retired officers. There are several more of these.

(2) This is particularly true in the defining of "retired officers." In many instances (though not all) they have been defined as "officers of the Government" even when they are not on active duty. The reasons for this are even sometimes beneficial to overcome other statutory words in beneficial statutes which restrict benefits, traditionally part of retirement, such as hospitalization to "officers of the Government."

(3) Again, the President was not talking of those statutes affecting retired officers alone. There are four statutes which do not impose criminal penalties, than than one—and the retireds are in that one also.

(4) This is compounded for retired officers if for no other reason they are included in the statutes being discussed by the President as well as others.

(5) On this specific observation, a congressional committee in 1959 (the Hébert committee) which studied this area specifically as applied to retired officers reached exactly the same conclusion.

(6) This is not true concerning active duty officers. The Uniform Code of Military Justice and the regulations of the armed services make it clear that any such action is not only cause for dismissal—but is criminal.

(7) This is not really applicable unless applied to young men contemplating a career as an officer of the armed services. In this context, most certainly any effect at all would be obviously detrimental to the recruiting process.

(8) The remainder of the quote relates to specific exemptions enacted by Congress to encourage recruitment—and is obviously not germane to the discussion here.

The House report toward the bottom of page 3 begins a very fundamental exploration of philosophy and fairness, as well as a historical development. Recognizing for brevity's sake the fact that the following quotes are taken out of context, they are not taken for purposes of proving an inconsistent point, but for brevity alone:

"* * * The principle which they embody in varying form—that a public servant owes undivided loyalty to the Government—is as important today as when the first of these statutes was enacted more than a century ago. However, these statutes were not adopted as a whole, but achieved their initial enactment, one at a time, over a long period, in response to specific existing evils which, from time to time were important political issues * * *."

This truism applies equally in philosophy to the retired officer statutes, which as already pointed out, are even more numerous than the relatively narrow field of statutes which apply to all other Government employees including the retireds.

"* * * In addition the concept of 'transacting business' if narrowly construed as would be likely in a criminal prosecution—would exclude many dealings with the Government, such as the clearance or rejection of license applications in the executive branch or before an independent agency.

"Similar defects exist in the case of Government officials who have left Government service. Clearly such an official should be prohibited from resigning his position and 'switching sides' in a matter which was before him in his official capacity * * *."

"But if the statutes often leave important areas unregulated, they also often serve as a possible bar to securing important personal services for the Government through excessive regulation when little or no ethical problem really exists * * *."

The excerpts directly above are discussing the situation of certain categories of Government employees, and certainly exclude the retired officers who are under extreme restrictions far beyond "switching sides" and so forth. The excerpts are submitted to focus attention to the fact that H.R. 8140 is "tightening" restrictions of these Government workers for the reasons stated, and if enacted with the retired officers included, would actually result in "loosening" the restrictions on this group.

Question. Why shouldn't retired officers have exactly the same restrictions, privileges, rights, and duties as the other Government employees insofar as what they do in civilian life?

At the bottom of page 4, the House report has an interesting observation:

"In general, these difficulties stem from the fact that even occasional consultants are regarded as 'officers or employees' of the Government, whether or not compensated. As such, they are within the prohibitions applicable to regular full-time personnel."

Although apropos to a different context, the statement pinpoints the exact difficulty involved with retired officers. As alluded to already, they are considered "officers" and under the same prohibitions applicable to regular full-time personnel. They are the only group of former Government employees so segregated—and the reasons are historical and confused.

Question. Is there any germane reason why H.R. 8140 cannot rectify this situation by a simple definition for the purposes of uniformity in statutes applicable to bribery, graft, and conflicts of interest?

The substance of page 5 of the report deals with the fundamental principle of "fairness" to partners, tax lawyers, and so forth under specific sections of the current law. Hence, extracts of words below are taken out of the context for this purpose:

"* * * though he personally has no connection with any case * * * unfairly affects accountants * * * totally uncoordinated language or in policy * * *. They should be confined to 'switching sides' * * * a drastic penalty for contributing to public service * * *. It is manifest to the Committee on the Judiciary that the existing Federal conflict-of-interest laws require revision. The proper operation of a democratic government requires officials be independent and impartial * * *. It is also fundamental to the effectiveness of democratic

government that, to the maximum extent possible, the most qualified individuals in the society serve its government * * * its employees should not be denied the opportunity available to all other citizens, to acquire and retain economic and other interests, except where actual or potential conflicts with the responsibility of such employees to the public cannot be avoided."

Again the point must be emphasized: While much of the foregoing language seems to imply a harbinger of great restrictions on Government employees, it moves the restrictions backward in the case of retired officers. Hence the proposed statute might appear to be "harsh" as applied to Government employees; it liberalizes the restrictions placed on retired officers.

Question. Is there any reasons why retired officers should continue under statutes which are far more stringent than new statutes being enacted for other Government employees which are far harsher than before?

To end the discussion on the "reasons for the bill" the following from page 7 of the House report is quoted:

"Other inequalities and numerous technical deficiencies could also be cited."

To this, the retired officers could add an "Amen."

Now, what makes retired officers any different from their fellow citizens insofar as the actual needs for bribery, graft, and conflict-of-interest statutes are concerned?

1. Does the fact that a Regular officer receives retired pay from the Government constitute a salient point which requires different standards of conduct?

Obviously not. Several groups of citizens receive retired pay from the Government in recognition of faithful and devoted service. Civil servants, Congressmen, Retired Reserve officers; non-civil-service career civilians; and all classes of enlisted men of the Armed Forces receive retired pay from the Government.

2. Is the fact that the Regular officer's retired pay is noncontributory, a salient reason?

Apparently not. Enlisted personnel of the armed services and all retired reservists also receive noncontributory retirement benefits.

3. Is their status as officers in the Regular service a salient reason for discrimination?

If the word "salient" is used in its legally philosophical sense it would seem not. Many Reserve officers have served on active duty far longer than many retired Regulars. They are receiving retired pay commensurate (in fact exactly equal to) the Regular. The basic difference has been the administrative transfer from one status to another has never been accomplished, usually for completely unrelated reasons.

4. Is the fact that Regular retired officers are subject to recall to active duty a salient reason to discriminate against them?

Retired officers are subject to recall to active duty in times of war. On the other hand, Reserve officers are subject to recall to active duty in times of emergency (as is the present case of actuality today, with thousands of Reserve officers temporarily back on duty). In addition, Reserve officers of the Active Reserves are allowed to spend 2 weeks a year on active duty. Retired officers can be voluntarily recalled to active duty in peacetime if requested by the Secretary of the Navy and if the retired officer agrees. Obviously the Secretary then controls any element here in conflicts-of-interest cases. The number so recalled is infinitesimal when compared to the Reserve on duty, and these who are recalled serve in positions like the Curator of the Naval Academy Museum; Director of Naval History; Superintendent of the Naval Home; and on special pay boards. Obviously, nonsensitive procurement areas.

5. Is it a salient point that many retired Regulars were in procurement billets while on active duty?

The number of civil servants in procurement jobs far exceeds the number of Regular officers. In fact, many Reserve officers serve in procurement billets as well.

6. Is the fact, then, that Regular officers, because of their duty stations and so forth, gain specialized knowledge of systems and procedures, a salient point in the discussion?

Of course, anyone in Government gains certain elements of knowledge because of his job which do not necessarily translate themselves to every other Government employee. In all elements of the spectrum from the civilian secretariat of the armed services; congressional committee assignments; through senior political appointees and civil servants; all the way down to the blue collar workers, individuals, because of their jobs gain entree to information of value

to them in future dealings with the Government. The question is really not what information one might learn then, but the ethics of using this information in civilian pursuits. Since all other classes may use the information learned, so long as it is legitimately used (the purpose of H.R. 8140), it is submitted that retired Regular officers should be able to use theirs within the same ground rules.

7. Is the fact that military service cements very close personal relationships, a germane reason to restrict Regular officers more than other Government employees after retirement?

Again, with the vastness of modern government, it is hard to support this proposition. Reserve officers, again, often run a completely parallel career to a Regular. Enlisted personnel and civil servants form close personal ties. In fact, in specific "business" considerations, a civil servant, shifting to a commercial firm dealing in the area in which the civil servant spent his career, knows far more about this area than any officer who is periodically rotated in duty.

8. If the question of suspicion of ethics and integrity is involved here, is it fair to impugn the ethics and integrity of a man solely because of his status as a retired Regular officer?

This is an extremely galling question to those involved. There is not one scintilla of evidence to warrant the impugning of the integrity of the class of men known as "Regular retired officers."

9. Has this whole area of discussion ever been specifically investigated by the Congress, and if so, what were the results?

Yes, it was investigated from July 7, 1959 through September 1, 1959. The actual results were negative. The committee, however, remarked:

"We have been assured by Defense Department officials and others that the procurement process has so many safeguards, influence cannot play a part. If this be so, then the additional statutory safeguard of isolating recently retired officers and retired civilian officials employed by defense contractors, away from the selling process, will be an added useful resource."

It is submitted that the above statement, as applicable to H.R. 8140 could apply across the Government board, and if so, represents even more reason for putting all former employees in the same boat.

10. Were there any results of the hearings referred to above?

Yes. The Department of Defense issued a directive "defining" selling as used in the statutes. The definition was extremely broad and already has been struck down to some extent by a ruling of the Comptroller General in a case referred to it in point by the Department of Defense.

11. Were there any other results from this hearing and the DOD directive?

Yes, many retired officers quit their civilian jobs for fear of being in violation of the new directives. In addition, many companies adopted a policy of "no hire" in the case of Regular retired officers, for fear of collateral attacks in the premise.

12. Does this hurt the defense posture of the United States?

A. If morale has a correlation to success on the battlefield, it does. Active duty officers, facing retirement, or even contemplating it in the far future, "look to their families' security" much like other Americans. Knowledge that they will be barred by extremely broad language, from utilizing the only skills they gain as adults is quite devastating to morale. The more senior these men become the closer to retirement they come and yet the greater military responsibilities they assume.

B. If we assume that there is a shortage of technical talent in this country, most assuredly, removing Regular officers from the "swim" for any period after retirement, waters down their capabilities to that extent. Under the confusion of the current directives, based on the confusion of the current statutes, the officer and industry are taking tangible risks if the officer's technical capabilities are used in industry.

13. But isn't industry free to hire officers in "nonselling" jobs?

Yes, theoretically. The problem here is in what is meant by "selling." It is this word alone which causes the confusion and generates the risks. The definitions of selling have been so broadened as to preclude "any liaison which might remotely lead to a sale" and this simple clause actually caused the Department of Defense to ask the Comptroller General of the United States whether an officer was "selling" if he answered questions initiated to him by the Secretary of Defense.

of the Navy or high military officials; if he attended Navy League meetings; and if he attended social parties at which active duty officers or civil servants were in attendance. It is submitted that if the Department of Defense did not know whether these activities were "selling," that it is an unwarranted burden on the individual officer and industry to define the limits of selling. In the cited case, the officer's pay was withheld pending the Comptroller General's opinion, and was even checked against him retroactively for a few days.

14. Is the "selling" referred to above connected to activities with which the officer was connected while in service?

Not directly. Of course, those activities with which the officer was concerned in the service are specifically covered in the statutes and would be covered in H.R. 8140.

But, in the actual sense that the word is used in the statutes and in the regulation, the word refers across the board, without any exception, to any and all activities connected with the service in which the officer holds a retired status, whether the system or equipment was even in being when the officer retired.

15. What effect will the new Defense Supply Agency have, for example on a Regular retired Air Force officer in conducting "selling" activities with them.

This is not clear. It could be argued that the officer would have to ascertain what department's payroll the procurement officer was on; and then to which service the products would be issued eventually.

16. What problems would arise if the Navy was procuring the McDonnell Co.'s F4H-2 Phantom fighter plane, and the project manager was a retired Air Force officer; if the Air Force should also decide to buy the plane?

The Air Force officer would either have to give up his retired pay (if he had been retired more than 2 years); go to jail if he had been retired less than 2 years, or quit his job.

17. Then, if an officer takes a job with a company which is not currently selling to the service in which he holds a retired status, is he in any career jeopardy in the future?

Yes. Even a company which has never done 1 cent's worth of business with the Government and might hire a retired Regular officer as a sales manager, would have to turn him loose or change his career if a decision were ever made to even try and sell one of the products to the service in which the retired officer holds status.

18. Is there any germane advantage to a "cooling off period" after retirement?

In the context of this discussion, unless some germane reason exists to sequester Regular retired officers only from all other Government employees, the answer would seem to be "No". On the contrary, a dramatic example might point up the situation which could occur during a "cooling off" period. Suppose for example, Colonel Glenn were suddenly retired for disability. Under a cooling off period (which actually exists with criminal sanctions today, for 2 years) he would be precluded from contributing his skills to the space program as a member of industry.

19. Are retired officers hired by defense industry commanding large salaries?

Some are. However, according to the Hébert committee report, the average salary paid to all officers above the rank of major, is \$950 a month, just slightly less than the active duty pay and allowances of an active duty major who does not receive extrahazardous pay. It is slightly more than the next lower ranked officer who does.

20. Is there any correlation between this salary scale and the value to industry of the Regular retired officer?

No one knows for certain. But given a normal law of supply and demand in the labor market, and the normal impetus of the individual to receive as high pay as he can command, it would seem that facts belie any premise that these officers can in fact, materially influence procurements at all.

21. Cite statistics on profits to support the above statement.

The Defense Department procures goods and services in excess of \$20 billion a year. If the average "profit" is 10 percent, then the profit on a single contract of \$14,000 would pay the officer's salary for a year. This is an infinitesimal portion of the total, procurement budget.

22. Then what value are these people to industry?

They are an important member of the teamwork which can help get business. They can translate the operational environments for scientists and technicians who have not been in these environments; they can steer companies from blind

alley projects on which much money could be spent, and into more fruitful pursuits with a better chance of payoff. They can also directly contribute (where so trained) to the scientific and technical efforts.

23. But some retired officers make a lot more than \$950 a month. Are these people any different?

Of course. Some active duty officers have tremendous managerial skills and technical skills. Some do not. Some, while in service, command and manage extremely complex Government-owned industrial facilities. Some are, by nature, analytical geniuses. Unfortunately, some are pretty mediocre people under any circumstances. The point here is that a spectrum exists, and it is obviously impossible to legislate in an isolated part of the spectrum.

24. Then, what is the solution?

The solution appears to be relatively simple. If the discussion and questions above point out the desirability to put all former Government employees on the same basis as to restrictions after leaving Government, if the sense of H.R. 8140 is to alleviate a confused and complex situation, then the following steps could be taken:

A. Eliminate the parenthetical matter at the end of the bill relating to the keeping of those sections of 18 U.S.C. 281 and 283 which apply solely to Regular retired officers.

B. Strike out section 206 of the bill if:

C. A clause is added in section 202 of H.R. 8140 that:

"For the purposes of this statute a Regular retired officer of the Armed Forces not on active duty is to be considered as a 'former employee' of the Federal Government."

D. Repeal 5 U.S.C. 59c (the so-called General Harbord bill which was enacted in 1924 when General Harbord became president of the Radio Corp. of America). This is a noncriminal statute, and is generally repugnant for the reasons stated in detail above, and is discriminatory against only Regular retired officers solely because of their status as such. This is part of the "cleaning up process" needed, and is an example of the historical development above.

E. Repeal 10 U.S.C. 6112(b). This has already been passed by the House (H.R. 11217), and is currently in the Senate. This provision is another "personality" statute which remains on the books. It forbids payments to Navy and Marine Regular retired officers if, during their entire retired lives, they "sell" war supplies or materials of any nature to the Department of the Navy. No similar statute exists for the other services. This is also part of the "cleaning up" process.

It is believed that these extremely simple steps will completely solve the inequities existent today, and cause the executive of the general purposes and reasons stated in support of H.R. 8140.

Captain WILLENBUCHER. Thank you, Mr. Chairman.

Senator KEATING. Thank you, Captain Willenbucher.

The next witness is Capt. Joseph K. Taussig, Jr.

You may proceed, Captain Taussig.

STATEMENT OF JOSEPH K. TAUSSIG, JR., CAPTAIN, U.S. NAVY (RETIRED)

Captain TAUSSIG. I am Capt. Joseph K. Taussig, Jr., U.S. Navy, retired. I wish to thank you for allowing me to appear before you on this bill which is of extreme importance to the defense of this Nation, to persons like myself, and as a judicial principle which has long needed recognition in a sane and unemotional light.

You gentlemen have heard, and undoubtedly will hear more, on the specific legalistic points of the bill before you in a substantive way. You will hear and have heard proponents for striking out this word or clause, and that word or clause. In my short statement to you, I will focus my attention to the humanistic side of this, for you are contem-

plating the enactment of a criminal statute—and I believe it is fair to link crime with humanics. In this context, I am asking for inclusion in the bill rather than exclusion. The bill from my point of view is very favorable to me, sir.

Senator KEATING. That is a refreshing thing to hear.

Captain TAUSSIG. Briefly in a biographical sense, I was born in 1920, educated in the public school system, was a Boy Scout, went to dances whenever my pocketbook would allow, and lived a relatively normal life for a young American. In 1937, just after my 17th birthday, I was appointed to the Naval Academy, and I was commissioned an ensign in the Regular Navy a few months before my 21st birthday. I was a professional naval officer then, from 1937 until I was retired for physical disability of 80 percent in 1954. In the interim, I served my country in two wars—World War II and the Korean conflict.

I am married and have two children. My son, I am proud to say, enters the Naval Academy next week to become the fourth Taussig in direct line to have the privilege to serve his Nation as a professional naval officer and Naval Academy graduate.

Since my forced retirement in 1954, I have been much concerned as a personal matter with the problems of earning a living and raising my family.

I believe that this is a right to which I am entitled as an American citizen, and that I should be free to seek my fortune in any legitimate pursuit, and to the best of my abilities short of indulging in bribery, graft, and conflicts of interest in the sense of H.R. 8140.

I do not seek nor expect any special privilege in the premise. I am a first-class citizen of this Nation, and have done, and will continue to do my part in upholding this status without seeking special privileges which to me need only be sought by the weak.

But while I do not seek privileges, I believe I have every standing as a citizen, to seek my rights—and my path has led to this committee because in H.R. 8140 the rights I seek are spelled out in detail which I am more than willing to accept.

The gentlemen of this committee are all lawyers and well aware of the interplay between rights and duties, privileges and obligations. This is the context of my concluding remarks.

Very few people, except we Regular retired officers really appreciate and understand the direct and indirect restrictions placed upon us in pursuing the normal American right to earn a legitimate living after retirement. Few apparently can even understand my indignation at the treatment I have received under the existing statutes which H.R. 8140 intends to leave on the books because to quote “the situation involving Regular retired officers is very complex.” I submit to you gentlemen that there is no germane reason why the situation regarding Regular retired officers is more complex insofar as the tenets of bribery, graft, or conflicts of interest, than any other group of Government employees and former Government employees, be they civil servants, enlisted men, Congressmen, dollar-a-year men, political appointees, retired Reserve officers receiving pay, or anybody else. I believe that my standards of conduct should certainly be no less nor any more than those expected of these groups. But let me outline an actual situation which has recently directly affected me.

In late March I received a 14-page directive from the Department of Defense entitled "Standards of Conduct." I read this directive, and added it to my file of over 20 other directives, and a long list of statutes and statutory interpretations which dealt solely with me as a member of the class known as Regular retired officers.

However, the new Department directive was somewhat different than the others. It was the first directive sent me since the hearings before the House in 1959, which Captain Willenbacher mentioned, wherein the activities of retired officers working for defense industries was thoroughly investigated. The results of these hearings, or rather the finding of fact were basically that not one single case of wrongdoing involving moral turpitude was discovered and in those cases which might come under the nonmoral turpitude statutes, actually, not one case was proven.

Yet, here was a Department of Defense directive, enlarging on the definitions of the restrictive words in the statutes * * * and what made me totally indignant, was that the directive required me, as a Regular retired officer, to submit a statement of employment. I was not indignant because the civil servants and the Reserve officers who were covered by parts of the directive did not have to submit any such statement—for I am willing to indulge the anglo-American presumption that their conduct is as good as mine until proven in an individual case—I was indignant because I was now grouped with the three other classes of people in this country who must register their employment activities with this Government, to wit: Aliens; Federal parolees; and Communists.

I submit to you gentlemen that I believe that my honorable service to my Nation as a professional leader of the young men of this Nation in wartime, warrants a more considerate treatment of my pride and dignity.

I wrote to the Secretary of Defense and strongly protested the directive, and stated that I was certain that he has not been adequately briefed on its implications either from a morale point of view for those currently involved or for those still in service; or from the other side of the coin—had the directive been a Soviet directive, and in effect restricted any retired Soviet officer from assisting Soviet industry on pain of going to prison for 2 years and suffering a \$10,000 fine, or if he had been retired more than 2 years, merely losing his retired pay.

I think we would think the Soviets had lost their minds. You see, gentlemen, few people realize that the statutes and policies have nothing to do specifically with only matters concerning us when on duty. They cover the entire spectrum of activity.

I asked the Secretary three specific questions, and asked him to tell me if under his new definition of the word "selling" I would be in violation if I answered questions initiated by the Secretary of the Navy or high military officers; whether attendance at Navy League and other trade association meetings were forbidden; and whether attendance at Naval Academy Alumni Association meetings and casual social parties attended by Navy Department people were forbidden. Those were the three questions.

I believe that the reaction will electrify you gentlemen who are used to hearing all sorts of things:

I have yet to hear from the Secretary of Defense or the Secretary of the Navy who were also addressed in my letter. However, I did receive a letter from the Comptroller of the Navy informing me that my retired pay had been stopped pending a decision by the Comptroller General of the United States as to whether my activities violated the Department of Defense directive.

One, I almost expected such a referral, because I was pretty sure that the Defense Department could not possibly interpret their own directive. It is so complex, and is based on such an utter confusion of statutes and stare decisis, that nobody could interpret it. And yet, they had sent it to me as a Regular retired officer and expected me to interpret it.

Despite the release to the press to the contrary, my pay was actually stopped retroactively for about 2 weeks back. The Department told the press that my pay had been stopped as of May 1, but actually, I was informed that it had been stopped on April 17, and they did not pay me from April 1 to April 17—or thereafter. The Comptroller ruled last week, and his ruling was in my favor. However, it is a very narrow ruling. I can now answer questions asked me by the Secretary of the Navy, and drink a cocktail with my Naval Academy roommate and so forth and still keep my pay. I am still living on sufferance.

The point I want to make and make as heavily as possible is this: Solely because I have the status, which I earned in the devoted service of my country, as a Regular retired officer, I am willing to accept a high standard of conduct, if for no other reason the defenses of this Nation will suffer indirectly if I disgrace my uniform. On the other hand, I believe that it is basically and fundamentally un-American to have to live under a fuzzy set of rules which even the Department that writes them cannot interpret, suffer loss of retired pay without any semblance of a judicial or quasi-judicial hearing or any semblance of the due process clause of the Constitution which is reserved for my fellow citizens.

I realize that because of my status solely as a Regular retired officer that the due process clause does not apply to me in the premise. However, I do believe that unless there is an overriding military reason to the contrary, I should be accorded the right, in the sense of it being a privilege, whenever possible.

This is my personal case. I could cite others equally ridiculous. They have absolutely nothing to do with the activity of the individual while in the service. The cases do not apply to "changing sides" or anything else, they apply solely because of the peculiar status as "Regular retired officers."

Item: A retired marine bought a filling station. The Marine recruiters who had to buy gasoline on the civilian market, bought from the gasoline station. The Marine officer lost his pay.

Item: A former Chief of Army Chaplains, with a new missal—a rather nice play on words—wanted to present it to the Defense Chaplains' Board. He could not. Conflict of interest.

Item: Two former enlisted men who had earned their commissioned status were deprived of their retired pay, and retroactively for several months, for representing competing beer firms in Norfolk as public relations representatives. The beer that their company sold was not even bought with appropriated funds.

Finally, though it is not the direct judicial concern of this committee, I would point out that if there is the shortage of technical brains and administrative abilities in this Nation which we read so much about; by indirect action, your including of Regular retired officers in H.R. 8140 will make available, without recourse to sneaking around and equivocation, a large, and probably the best reservoir of unused technical talent existing in this world today.

I will be frank with you, many of us who are trained to be brave in the face of an armed and determined enemy on the battlefield, are frightened in the face of the possibility of losing our retired pay and security, or worse, going to jail for pursuing activities which are allowed to everyone else in this Nation without fear of reprisal, and without regard to previous condition of servitude.

I am naturally, and I believe you will see my point, completely out of patience with the protocol and nicety boys who say that our status is so complex that it must be studied further, and so forth and so forth. We have been studied in detail by Congress. We have come through with flying colors.

H.R. 8140 can be easily amended to include us in its provisions. I hope that you gentlemen will see your way clear to perform this simple service for us.

Senator KEATING. Thank you very much, Captain Taussig.

The committee will take a recess until Senator Hruska gets here.

(Brief recess.)

Senator HRUSKA (now presiding). The subcommittee will come to order.

We will continue the testimony on H.R. 8140.

Our next witness is the Senator from New York, who has for many years been interested in legislation along the lines suggested in H.R. 8140.

Senator JAVITS, we welcome you. We know that your contribution will be very helpful and that you will contribute a great deal to our understanding of the needs in this particular field.

Will you proceed with your statement?

STATEMENT OF HON. JACOB K. JAVITS, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator JAVITS. Mr. Chairman, first let me thank the committee for hearing me rather late in the hearings, as I know that it may be the final opportunity to be heard.

Second, my interest in this subject originates from the fact that I was attorney general of the State of New York, and had the honor of inaugurating the administration of our own State code of ethics, applicable to our own public officials.

Senator HRUSKA. Was that done by statute?

Senator JAVITS. It was done by statute, and the statute took effect when I became attorney general of the State, which was in January of 1955. I had the interesting experience of installing the administration of our New York State Code of Ethics, and seeing it through its first 2 years.

I also have the honor of being the sponsor of S. 603, cosponsored by a member of this committee, Senator Keating. S. 603 is a codification

of a report of the Association of the Bar of the State of New York through its Special Committee on the Federal Conflict of Interest Laws, headed by Roswell B. Perkins, who testified before the committee this morning. I will comment on his testimony.

Also, I am the author of two bills in addition to S. 603: S. 637, in which, also, Senator Keating was a cosponsor, which deals with the disclosure of communications received by Government agencies from Members of Congress, and also Senate Concurrent Resolution 10, which deals with an effort to develop a separate code for Members of Congress.

I believe that H.R. 8140, which is before the committee, should be amended to deal with communications by Members of Congress to agencies and departments of Government. As we all know, such communications do occur; Senator Dirksen has on occasion very eloquently described the duty of a Senator or a Congressman to communicate with Government departments, and the only thing we want is that they should be of public record. We understand that the departments have difficulty in screening such communications. We know they can be very influential, and we know that generally speaking they are entirely legitimate. We know, however, that they have the capacity of turning in a sour direction. Therefore, in the traditional American way, we say, "We know it is something that has to be done, indeed it is advantageous to have it done, it gives the citizen a channel to correct bureaucratic oppression and injustice through the legislative arm, provided that there is complete disclosure."

And so I urge very strongly upon the committee that the essence of S. 637, which is my bill, as I say, cosponsored by Senator Keating, introduced January 26, 1961, be incorporated in H.R. 8140.

The other point that I would like to make is the need for taking a totally different sighting on Members of Congress than we have in H.R. 8140. As it comes over from the other body, three of its six operative sections apply to Members of Congress. Three do not.

Now, the operative sections which do apply are sections 201, the so-called bribery section, both on the giving and the receiving end, and section 203, which deals with compensation equivalent to inducing or influencing actions which, because so induced or influenced, become improper. Section 204 is the traditional section dealing with claims representation and the so-called 2-year rule and, of course, it is quite proper that we include Members of Congress there. Section 205 deals with claims representation by officers and employees.

But when you get over to section 207, where you get into the really gray area, in the sense of disqualification of yourself and your partner from representing interests with which you have had something to do when you were an incumbent, and when you get over into section 208, an even more sticky problem for legislators, where you are dealing with problems of personal financial interest which might influence your action in a matter in which you have a duty and responsibility to act as a Government official, there the bill excludes Members of Congress.

Now, I think H.R. 8140 is not tailored to deal with the problems of conflict of interest as they arise in the Congress, since it includes Members of Congress in the most obvious ways, and it excludes them also in the most obvious ways. The problem is far too complex to

enable them to be included under those sections which deal with representation and conflicting financial interest, because there is a very great difference in the nature of their activities between Members of Congress and executive officers. After all, we come into contact with everything as Senators, not just the Department of Commerce or the Department of Interior, or some other department, but anything that happens in Government comes within our cognizance.

Senator HRUSKA. Senator Javits, there are only three sections, are there not, which now apply to Members of Congress?

Senator JAVITS. That is correct. And the other three, the remaining three do not.

There are six operative sections. The first three do, the most obvious ones, the bribery ones, the extra compensation, the naked representation, as it were, of a client, they include the Members of Congress.

But the two where you do have the delicate relationships, the disqualification after incumbency and the conflicting financial interests expressly exclude Members of Congress.

And I believe they are excluded because there are a lot of aspects of that kind of a code of ethics, which make it impossible to deal with it as broadly as this statute deals with executive employees.

And so I prefer for myself and I urge the committee to consider applying a code of ethics to Members of Congress which will be adaptable to their responsibilities and to their functions. And it is this kind of an approach which is contained in Senate Concurrent Resolution 10. What that does for all practical purposes is to establish a committee of the Congress to set up a code of ethics, to establish in the interim an interim code of ethics, but to commit the question of enforcement and the question of supervision to the Congress itself, whereas simply including Members of Congress in all sections of H.R. 8140 would commit that whole question to the Department of Justice. And I feel that this is the kind of a matter in which we ought to bear the responsibilities for regulation here. We have the power to expel a Member from the Congress by an appropriate vote, indeed it is provided by the Constitution, and that is the ultimate sanction. In addition, it is the voters who have the final authority over all Members of Congress. And it seems to me that to place the control over a code of ethics for Members of Congress in the Department of Justice would tend to break down the independence of the Congress.

Let us remember that the people have an enormous responsibility to maintain the independence and the integrity of the Congress, just as they have a responsibility to see that Members of the Congress, like other Government officials, comport themselves according to the ethical standards which represent the consensus of high morality within the community.

I think that this is a very, very critical subject for the committee to think through; perhaps the most critical in this whole package which is presented to you, because there you are not dealing with a matter of detail, you are dealing with a matter of fundamental policy and principle.

Senator HRUSKA. It is your proposal that Senate Concurrent Resolution 10 should be adopted? And would it replace anything which is embraced in H.R. 8140?

Senator JAVITS. It would replace all of the provisions of H.R. 8140 as they relate to Members of Congress, in other words, officials who are on the legislative side.

Senator HRUSKA. Would it amend section 201, section 203, and section 204 so as to expressly exclude Members of Congress from the terms of those sections?

Senator JAVITS. No. All that I point out, Mr. Chairman, is that it would subject Members of Congress to a complete code of ethics and apply a different type of administration and sanction to them. The main point that I urge upon the Judiciary Committee is that there should be a complete code for the Congress, but that we should not impair the integrity of the Congress, one of the three great branches of our Government, as an independent arm, by giving to the administration of such a code of ethics for Members of Congress, to the Department of Justice, the executive department. I believe that we are dutybound to keep it here in the Congress where we have adequate authority.

I emphasize that, Mr. Chairman, because I think it is a critically important question for us here in the Congress.

Now, the final point that I want to make is to support the testimony of the Association of the Bar of the City of New York as given by the chairman of its committee. There are a number of particular recommendations for change which are made in that testimony which I think commend themselves very materially to the committee.

Of course, there is the question of administrative remedy which I think should be added to the criminal penalty, so that there would be administrative authority as well as criminal authority for enforcement of the code of ethics.

Also, I think that in recommending a gift section the association of the bar made an excellent suggestion that specificity be supplied by regulation. Indeed, it is possible that there may be some departmental differences thoroughly dictated by the facts. I think such a provision will give a degree of flexibility. After all, we want to make this realistic in terms of established morality; we don't want to catch some unwitting, innocent employee who is a fine Government servant. Therefore, the idea of giving, especially in regard to this gift question, the power to make regulations with real specificity, instead of leaving it to the individual employee on some broad statutory base to make his own definitions, commends itself to me very highly.

So my final point, Mr. Chairman, is to commend to the committee a careful review of the suggestions and amendments made by the association of the bar with a view toward their incorporation in this bill.

And I refer specifically to the exhibits attached to Mr. Perkins' testimony regarding gifts, to which I have already referred; abuse of office; administrative remedies, which are contained in section 12 of my bill; and the preamble and declaration of purpose contained in section 1 of my bill. And in order to have it clear on the record, I will state that the recommendations which are made by the bar association are all contained in S. 603, of which I am the sponsor, and which is their bill.

Senator HRUSKA. We will see that is incorporated in the record for ready reference.

Senator HRUSKA. Should we do that same thing with respect to S. 637, dealing with communications?

Senator JAVITS. I should like to have that done, also.

And with reference to S. 603, section 6 of S. 603 covers the gift section raised by the bar association.

Section 7 provides the abuse-of-office section.

Section 12 provides the administrative section.

And section 1 provides the preamble and declaration of policy and purpose section.

(The bill referred to is as follows:)

[S. 603, 87th Cong., 1st sess.]

A BILL To supplement and revise the laws prescribing restrictions against conflicts of interest applicable to employees of the executive branch of the Government of the United States, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TABLE OF CONTENTS

TITLE I—PROHIBITED CONDUCT, ADMINISTRATION, AND PROCEDURE

- Sec. 1. Preamble; declaration of policy and purpose.
- Sec. 2. Definitions.
- Sec. 3. Acts affecting a personal economic interest.
- Sec. 4. Assisting in transactions involving the Government.
- Sec. 5. Compensation for regular Government employees from non-Government sources.
- Sec. 6. Gifts.
- Sec. 7. Abuse of office.
- Sec. 8. Postemployment.
- Sec. 9. Illegal payments.
- Sec. 10. Administration.
- Sec. 11. Preventive measures.
- Sec. 12. Remedies; civil penalties; procedures.

TITLE II—CRIMINAL PENALTIES

- Sec. 21. Acts in violation of Executive Conflict of Interest Act.

TITLE III—AMENDMENT AND REPEAL OF EXISTING LAWS

- Sec. 31. Amendment of title 18, United States Code, sections 216 and 1914.
- Sec. 32. Amendment of title 18, United States Code, sections 281, 283, and 434.
- Sec. 33. Amendment of title 18, United States Code, section 284.
- Sec. 34. Amendment of title 22, United States Code, section 1792.
- Sec. 35. Amendment of title 5, United States Code, section 30r(d).
- Sec. 36. Repeal of particular substantive restraints.
- Sec. 37. Repeal of particular substantive restraints applicable to retired officers.
- Sec. 38. Repeal of exemptions from particular conflict-of-interest statutes.

TITLE IV—MISCELLANEOUS PROVISIONS

- Sec. 41. Short title.
- Sec. 42. Effective date.

TITLE I—PROHIBITED CONDUCT, ADMINISTRATION, AND PROCEDURE

§ 1. Preamble; declaration of policy and purpose

(a) The proper operation of a democratic government requires that officials be independent and impartial; that government decisions and policy be made in the proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. The attainment of one or more of these ends is impaired whenever there exists, or appears to exist, an actual or potential conflict between the private interests of a government employee and his duties as an official. The public interest, therefore, requires that the law protect against such conflicts of interest and establish appropriate ethical standards with respect to employee conduct in situations where actual or potential conflicts exist.

(b) It is also fundamental to the effectiveness of democratic government that, to the maximum extent possible, the most qualified individuals in the society serve its government. Accordingly, legal protections against conflicts of interest must be so designed as not unnecessarily or unreasonably to impede

the recruitment and retention by the Government of those men and women who are most qualified to serve it. An essential principle underlying the staffing of our governmental structure is that its employees should not be denied the opportunity, available to all other citizens, to acquire and retain private economic and other interests, except where actual or potential conflicts with the responsibility of such employees to the public cannot be avoided.

(c) It is the policy and purpose of this Act to promote and balance the dual objectives of protecting Government integrity and of facilitating the recruitment and retention of the personnel needed by Government, by prescribing essential restrictions against conflicts of interest in the executive branch of the Government without creating unnecessary barriers of public service.

§ 2. Definitions

Unless the context of this Act otherwise clearly requires, for purposes of this Act the terms defined in this section shall have the respective meanings hereinafter set forth. The terms defined in this section include: "agency"; "agency head" and "head of an agency"; "assist"; "compensation"; "Government action"; "Government employee"; "intermittent Government employee"; "participate"; "person"; "regular Government employee"; "responsibility"; "State"; "thing of economic value"; and "transaction involving the Government".

(a) "Agency" means—

- (1) the Executive Office of the President;
- (2) an executive department;
- (3) an independent establishment within the executive branch; and
- (4) a Government corporation.

For purposes of this subsection (a)—

(i) the executive departments are the Departments of State; Defense; Treasury; Justice; Post Office; Interior; Agriculture; Commerce; Labor; and Health, Education, and Welfare; and

(ii) "independent establishment within the executive branch" means any establishment, commission, board, committee or other unincorporated instrumentality of the United States which is not—

(A) part of an executive department or Government corporation; or

(B) part of the legislative or judicial branches of the United States.

(iii) "Government corporation" means any corporation which is either defined as a "wholly owned Government corporation" in the Government Corporations Control Act of 1946 or is designated as a Government corporation for purposes of this Act by the President by regulations issued pursuant to section 10.

(b) "Agency head" and "head of any agency" mean the chief executive officer of an agency, who shall be the chairman in the case of an independent establishment which is a commission, board, or committee. The Secretary of Defense may delegate to the Secretaries of the Army, the Navy, and Air Force such of his responsibilities as an agency head as he may deem appropriate.

(c) "Assist" means to act, or offer or agree to act, in such a way as to help, aid, advise, furnish information to, or otherwise provide assistance to, another person with knowledge that such action is of help, aid, advice, or assistance to such person and with intent so to assist such person.

(d) "Compensation" means any thing of economic value, however designated, which is paid, loaned, granted, or transferred, or to be paid, loaned, granted, or transferred for, or in consideration of, personal services to any person or to the United States.

(e) "Government action" means any action on the part of the executive branch of the United States, including, but not limited to—

(1) any decision, determination, finding, ruling, or order, including the judgment or verdict of a military court or board; and

(2) any grant, payment, award, license, contract, transaction, sanction or approval, or the denial thereof, or failure to act with respect thereto.

(f) "Government employee" means any individual who is—

(1) appointed by one of the following acting in his official capacity—

(A) the President of the United States, or

(B) a person who qualifies as an employee under this definition; and

(2) engaged in the performance of a Federal function under authority of the Constitution, an Act of Congress, or an Executive act; and

(3) under the supervision or authority of one of the persons listed in (A) or (B) under (1).

Notwithstanding the foregoing, the term "Government employee" shall not include any of the following:

- (i) officers and employees in the legislative and judicial branches of the United States;
- (ii) employees of the District of Columbia;
- (iii) employees of corporations other than Government corporations as defined in subsection (a) (iii) of this section; and
- (iv) a reserve of the Armed Forces, when he is not on active duty and is not otherwise a Government employee.

An individual shall not be deemed an employee solely by reason of his receipt of a pension, disability payments, or other payments not made for current services, or by reason of his being subject to recall to active service.

Every Government employee shall be deemed either "intermittent" or "regular," as determined by the definitions contained in subsections (g) and (j), respectively, of this section.

(g) "Intermittent Government employee," means any Government employee who has performed services as such employee on not more than fifty-two working days (which shall not include Saturdays, Sundays, and holidays) out of the preceding three hundred and sixty-five calendar days: *Provided, however,* That—

(1) the President may issue an order increasing to not more than one hundred and thirty days the number of working days within a three hundred and sixty-five calendar day period on which a particular Government employee may perform services while still being classified as an intermittent Government employee for purposes of this Act: *Provided,* That the President shall make a determination that the national interest requires the retention of such employee's services during a further specified period. A statement of the pertinent facts and of the President's determination of national interest shall be published in the Federal Register;

(2) a reserve of the Armed Forces, unless otherwise a regular Government employee, shall be classified as an intermittent Government employee for purposes of this Act while on active duty solely for training, irrespective of the number of working days of such training;

(3) irrespective of the fact he has performed services on less than fifty-two working days, a Government employee shall be deemed a regular Government employee, as defined in subsection (i) of this section, and not an intermittent Government employee, if—

(A) he was appointed to a position calling for regular and continuing full-time services, and

(B) his appointment did not evidence an intent that his services would be for a period of less than one hundred and thirty working days in the three hundred and sixty-five calendar day period following such appointment.

The termination of any particular term of employment of an intermittent Government employee shall take effect on the day when the earliest of the following events occurs:

(i) He becomes a regular Government employee as defined in subsection (j) of this section;

(ii) He resigns, retires, or is dismissed, or the termination of his status is otherwise clearly evidenced; or

(iii) Three hundred and sixty-five calendar days shall have elapsed since the last working day on which he shall have performed services as an intermittent Government employee, unless his appointment was expressly for a longer period.

An intermittent Government employee shall be in such status on days on which he performs no services as well as days on which he performs services.

(h) "Participate," in connection with a transaction involving the Government, means to participate in Government action or a proceeding personally and substantially as a Government employee through approval, disapproval, recommendation, decision, the rendering of advice, investigation, or otherwise.

(i) "Person" means any—

- (1) individual;
- (2) partnership, association, corporation, firm, institution, trust, foundation, or other entity (other than the United States or an agency), whether or not operated for profit;

(3) State or municipality of the United States or any subdivision thereof, including public districts and authorities; and

(4) foreign country or subdivision thereof.

(j) "Regular Government employee" means any Government employee other than an intermittent Government employee as defined in subsection (g) of this section. The termination of any particular term of employment of a regular Government employee shall take effect when he resigns, retires, or is dismissed, or the termination of his status is otherwise clearly evidenced.

(k) "Responsibility," in connection with a transaction involving the Government, means the direct, administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, effectively to approve, disapprove, or otherwise direct Government action in respect of such transaction.

(l) "State" means any State of the United States and the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

(m) "Thing of economic value" means any money or other thing having economic value, and includes, without limiting the generality of the foregoing—

(1) any loan, property interest, interest in a contract, or other chose in action, and any employment or other arrangement involving a right to compensation;

(2) any option to obtain a thing of economic value, irrespective of the conditions to the exercise of such option; and

(3) any promise or undertaking for the present or future delivery or procurement of a thing of economic value.

In the case of an option, promise, or undertaking, the time of receipt of the thing of economic value shall be deemed to be, respectively, the time the right to the option becomes fixed, irrespective of the conditions to its exercise, and the time the promise or undertaking is made, irrespective of the conditions to its performance.

(n) "Transaction involving the Government" means any proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other such particular matter—

(1) which the Government employee or former Government employee in question believes, or has reason to believe, is, or will be, the subject of Government action; or

(2) in or to which the United States is a party; or

(3) in which the United States has a direct and substantial proprietary interest.

§ 3. Acts affecting a personal economic interest

(a) ECONOMIC INTERESTS OF A GOVERNMENT EMPLOYEE.—No Government employee shall participate in a transaction involving the Government in the consequences of which he has a substantial economic interest of which he may reasonably be expected to know.

(b) ECONOMIC INTERESTS OF PERSONS IN WHICH A GOVERNMENT EMPLOYEE HAS AN INTEREST.—No Government employee shall participate in a transaction involving the Government in the consequences of which, to his actual knowledge, any of the following persons has a direct and substantial economic interest:

(1) His spouse or child; or

(2) Any person in which he has a substantial economic interest of which he may reasonably be expected to know; or

(3) Any person of which he is an officer, director, trustee, partner, or employee; or

(4) Any person with whom he is negotiating or has any arrangement concerning prospective employment; or

(5) Any person who is a party to an existing contract with such Government employee or an obligee of such Government employee as to a thing of economic value and who, by reason thereof, is in a position to affect directly and substantially such employee's economic interests.

(c) DISQUALIFICATION.—Every Government employee shall disqualify himself from participating in a transaction involving the Government when a violation of subsection (a) or (b) would otherwise result. The procedures for such disqualification shall be established by regulations issued pursuant to section 10.

(d) SUBSTANTIAL ECONOMIC INTEREST.—The term "substantial economic interest" may be defined by regulations issued by the President pursuant to section 10, but the term shall not include—

(1) the interest of a Government employee in his grade, salary, or other matters arising solely from his Government employment;

(2) the interest of a Government employee, or of a person referred to in subsection (b) solely as a member of the general public, or of any significant economic or other segment of the general public.

(e) **PRESIDENTIAL EXEMPTION.**—The President may issue an order suspending the operation of subsections (a) and (b), in whole or in part, as to a particular employee with respect to transactions involving the Government of a particular category or in connection with a particular assignment, provided that the President shall make a determination that under all the circumstances the national interest in such employee's participation exceeds the public interest in his disqualification. A full statement of the pertinent facts and of the President's determination of national interest shall be published in the Federal Register.

§ 4. Assisting in transactions involving the Government

(a) **GENERAL RULE FOR ALL EMPLOYEES.**—Except in the course of his official duties or incident thereto, no Government employee shall assist another person, whether or not for compensation, in any transaction involving the Government—

(1) in which he has at any time participated; or

(2) if such transaction involving the Government is or has been under his official responsibility at any time within a period of two years preceding such assistance.

(b) **ADDITIONAL GENERAL RULE FOR REGULAR EMPLOYEES.**—Except in the course of his official duties or incident thereto, no regular Government employee shall—

(1) assist another person for compensation in any transaction involving the Government;

(2) assist another person by representing him as his agent or attorney, whether or not for compensation, in any transaction involving the Government.

(c) **NO SHARING IN COMPENSATION.**—No Government employee shall share in any compensation received by another person for assistance which such Government employee is prohibited from rendering pursuant to subsection (a) or (b).

(d) **PARTNERSHIPS.**—No partnership of which a Government employee is a partner, and no partner or employee of such a partnership, shall assist another person in any transaction involving the Government if such Government employee is prohibited from doing so by subsection (a).

(e) **PERMITTING EXCEPTIONS.**—(1) Nothing in this section shall prevent a Government employee, subject to conditions or limitations set forth in regulations issued pursuant to section 10, from assisting, in a transaction involving the Government—

(A) his parent, spouse, or child, or any thereof for whom he is serving as guardian, executor, administrator, trustee or other personal fiduciary;

(B) a person other than his parent, spouse, or child for whom he is serving as guardian, executor, administrator, trustee, or other personal fiduciary;

(C) another Government employee involved in disciplinary, loyalty, or other personnel administration proceedings; or

(D) another person in the performance of work under a contract with or for the benefit of the United States:

Provided, however, That—

(E) in the case of clauses (A) and (B), such Government employee shall not have at any time participated in such transaction, nor, in the case of clause (B), shall such transaction have been under his official responsibility; and

(F) in the case of clauses (A), (B), (C), and (D), the circumstances of the assistance shall have been disclosed to the head of the employee's agency and approved by him in advance of the assistance; and

(G) in the case of clause (D), the head of such employee's agency shall have certified in writing that in his opinion the national interest will be promoted by permitting the special knowledge or skills of such Government employee to be made available to assist such other person in connection with such performance.

(2) Nothing in this section shall prevent a Government employee from giving testimony under oath or from making statements required to be made under penalty of perjury or contempt.

§5. Compensation for regular Government employees from non-Government sources

(a) UNCOMPENSATED EMPLOYEES.—For purposes of this section the term “regular Government employee” shall not include any Government employee who, in accordance with the terms of his appointment, is serving without compensation from the United States or is receiving from the United States only reimbursement of expenses incurred or a predetermined allowance for such expenses.

(b) PAYMENTS FOR SERVICES TO THE UNITED STATES.—No regular Government employee shall receive any thing of economic value, other than his compensation from the United States, for or in consideration of personal services rendered or to be rendered to or for the United States. Any thing of economic value received by a regular Government employee prior to or subsequent to his Government employment shall be presumed, in the absence of a showing to the contrary by a clear preponderance of evidence, not to be for, or in consideration of, personal services rendered or to be rendered to or for the United States.

(c) COMPENSATION FOR SERVICES TO OTHERS.—No regular Government employee shall receive any thing of economic value (other than his compensation from the United States) in consideration of personal services rendered, or to be rendered, to or for any person during the term of his Government employment unless such services meet each of the following qualifications:

(1) The services are bona fide and are actually performed by such employee;

(2) The services are not within the course of his official duties;

(3) The services are not prohibited by section 4 or by applicable laws or regulations governing non-Government employment for such employee; and

(4) The services are neither performed for nor compensated by any person from whom such employee would be prohibited by section 6(b) from receiving a gift; or, alternatively, the services and compensation are fully disclosed in writing to the head of the employee's agency and are approved in writing by him.

(d) PAYMENTS FOR FUTURE SERVICES TO OTHERS.—No regular Government employee shall receive, directly or indirectly, any thing of economic value during the term of his Government employment in consideration of personal services to be rendered to or for any person subsequent to the term of such employment. Nothing contained in this subsection (d) shall be deemed to prevent a Government employee from entering into a contract for prospective employment during the term of his Government employment.

(e) COMPENSATION FROM LOCAL GOVERNMENTS.—Nothing contained in this section shall prevent a Government employee from receiving compensation contributed out of the treasury of any State, county, or municipality if—

(1) the compensation is received pursuant to arrangements entered into between such State, county, or municipality and such employee's agency; or

(2) the compensation and the services for which it is received are fully disclosed in writing to the head of the employee's agency and are approved in writing by him.

(f) CONTINUATION IN CERTAIN PENSION AND OTHER PLANS.—(1) Nothing contained in this section shall prevent a Government employee's continuation in a bona fide pension, retirement, group life, health, or accident insurance, or other employee welfare or benefit plan maintained by a former employer but to which such former employer makes no contributions on behalf of such employee in respect of the period of his Government employment.

(2) Nothing contained in this section shall prevent a Government employee's continuation in a bona fide plan, maintained by a former employer and to which such former employer makes contributions on behalf of such employee, in the case of—

(A) a pension or retirement plan qualified under the provisions of the Internal Revenue Code, or

(B) a group life, health, or accident insurance plan: *Provided*, That the contributions by such employer are not made for a period longer than five consecutive years of Government employment (or an aggregate of five years out of the preceding ten).

(3) Nothing contained in this section shall require the termination of the rights of a Government employee acquired under a bona fide profit-sharing or stock bonus plan maintained by a former employer and qualified under the provisions of the Internal Revenue Code: *Provided*, That no contributions are made

by such former employer on behalf of the Government employee based on profits attributable to any portion of the period of his Government employment.

(4) The provisions of this subsection (f) shall be subject to any additional conditions or limitations, including limitations on maximum amounts, set forth in regulations issued pursuant to section 10.

§ 6. Gifts.

(a) GENERAL RULE FOR ALL EMPLOYEES.—No Government employee shall receive, accept, take, seek, or solicit, directly or indirectly, any thing of economic value as a gift, gratuity, or favor from any person if such Government employee has reason to believe the donor would not give the gift, gratuity, or favor but for such employee's office or position within the Government.

(b) ADDITIONAL GENERAL RULE FOR REGULAR EMPLOYEE.—No regular Government employee shall receive, accept, take, seek or solicit, directly or indirectly, any thing of economic value as a gift, gratuity, or favor from any person, or from any officer or director of such person, if such regular Government employee has reason to believe such person—

(1) has or is seeking to obtain contractual or other business or financial relationships with such employee's agency; or

(2) conducts operations or activities which are regulated by such employee's agency; or

(3) has interests which may be substantially affected by such employee's performance or nonperformance of official duty.

(c) PERMITTED EXCEPTIONS.—Exceptions to subsections (a) and (b) may be made by regulations issued pursuant to section 10 in situations where the circumstances do not lead to the inference that the official judgment or action of the Government employee receiving, directly or indirectly, the gift, gratuity, or favor was intended to be influenced thereby.

§ 7. Abuse of office.

Except in the course of his official duties or incident thereto, no Government employee shall, in his relationships with any person specified in the succeeding sentence, use the power or authority of his office or position within the Government in a manner intended to induce or coerce such other person to provide such Government employee or any other person with any thing of economic value, directly or indirectly. This section shall apply to relationships with any person, or any officer or director of such person, from whom such Government employee, if he were a regular Government employee, would be prohibited by section 6(b) from receiving a gift.

§ 8. Postemployment

(a) GENERAL RULE.—No former Government employee shall at any time subsequent to his Government employment assist another person, whether or not for compensation, in any transaction involving the Government.

(1) in which he at any time participated during his Government employment; or

(2) if such transaction involving the Government was under his official responsibility as a Government employee at any time within a period of two years preceding such assistance.

(b) NO SHARING IN COMPENSATION.—No former Government employee shall share in any compensation received by another person for assistance, which such former Government employee is prohibited from rendering by subsection (a).

(c) PARTNERSHIPS.—(1) No partnership of which a former Government employee is a partner, and no partner or employee of such a partnership, shall, for a period of two years following the termination of his Government employment, assist another person in any transaction involving the Government in which such former Government employee at any time participated during his Government employment. For purposes of this subsection, (c) (1), the termination of the former Government employee's employment with the agency by which he was employed when he so participated shall be deemed to be the termination of his Government employment.

(2) Whenever subsection (c) (1) would be applicable but for the expiration of the period of two years referred to therein, the circumstances of the former Government employee's participation in the transaction during his Government employment, if the individuals acting for the partnership are aware of such participation, shall be disclosed to the agency principally involved in the trans-

action involving the Government, and an affidavit of such former employee to the effect that he has not assisted in such transaction involving the Government shall be furnished to such agency.

(d) SPECIAL RULE FOR COMPUTATION OF TWO-YEAR PERIOD FOR CERTAIN FORMER INTERMITTENT EMPLOYEES.—For purposes of this section, a former intermittent Government employee whose employment terminated under clause (iii) of section 2(g) shall be deemed to have terminated such employment on the last working day on which he performed services as an intermittent Government employee.

(e) PERSONS FORMERLY ON ACTIVE DUTY AS COMMISSIONED OFFICERS OF ARMED FORCES.—The President shall, in furtherance of this section 8, issue regulations of the nature herein described applicable to persons who have been commissioned officers on active duty in one of the armed forces of the United States. Such regulations shall have the effect of prohibiting such persons, for the periods therein specified, from personally dealing with personnel of the Department of Defense, or of such units thereof as may be specified in such regulations, with the purpose of assisting in the sale of anything, including services, to the United States through the Department of Defense or such units thereof as may be specified in such regulations. The retirement pay of any retired commissioned officer who violates such regulations shall be terminated pursuant to the regulations issued hereunder for the periods therein specified.

(f) PERMITTED EXCEPTIONS.—The permitted exceptions, applicable to Government employees under section 4 (e) shall also be applicable to former Government employees under this section 8, subject to conditions or limitations set forth in regulations issued pursuant to section 10. For purposes of this section 8, references in such section 4(e) to the Government employee providing assistance shall be deemed to be to the former Government employee, and references to his agency shall be deemed to be to his former agency.

§ 9. Illegal payments

(a) PAYMENTS AS COMPENSATION, ETC.—No person shall give, pay, loan, transfer, or deliver, directly or indirectly, to any other person any thing of economic value believing or having reason to believe that there exist circumstances making the receipt thereof a violation of section 4, 5, or 8.

(b) GIFTS.—No person shall give, transfer, or deliver, directly or indirectly, to a Government employee any thing of economic value as a gift, gratuity, or favor if either—

(1) such person would not give the gift, gratuity, or favor but for such employee's office or position within the Government; or

(2) such person is in a status specified in clause (1), (2), or (3) of section 6(b).

Exceptions to this subsection (b) may be made by regulations issued pursuant to section 10 in situations referred to in section 6(c).

§ 10. Administration

(a) RESPONSIBILITY OF THE PRESIDENT.—(1) The President shall be responsible for the establishment of appropriate standards to protect against actual or potential conflicts of interest on the part of Government employees and for the administration and enforcement of this Act and the regulations and orders issued hereunder.

(2) The President may, and shall do so when required by this Act, issue regulations implementing or interpreting the provisions of this Act. Such regulations shall take precedence over any regulations issued by agency heads pursuant to subsection (c).

(3) The President shall have particular responsibility for the enforcement of this Act as applied to employees of the Executive Office of the President and to agency heads, and for this purpose the President shall have all the powers of an agency head.

(4) The President may conduct investigations of facts, condition or conditions, practices, or other matters in carrying out his responsibilities and powers under this subsection (a) and in obtaining information to serve as a basis for recommending further legislation related to the purposes of this Act. In connection with any such investigation the President shall have all the powers with respect to oaths, affirmations, subpoenas, and witnesses as are provided in section 12(b) (2). The President may delegate any or all of his powers under this subsection (a) (4) to the Administrator referred to in subsection (b) or to others, either generally or in particular instances.

(b) EXECUTIVE CONFLICT OF INTEREST ACT ADMINISTRATOR.—(1) The President shall designate an official from within the Executive Office of the President or create an office within the Executive Office of the President (such official or the head of such office being hereinafter referred to as the "Administrator") to perform the following functions:

(A) To assist the President in carrying out his responsibilities under subsection (a);

(B) To receive copies of all regulations issued by agency heads pursuant to subsection (c), to analyze the same and make recommendations to agency heads with respect thereto;

(C) To receive reports from agencies and to collect information with respect to, and conduct studies of, personal conflicts of interest of Government employees within the executive branch;

(D) To consult with the Attorney General, the Chairman of the Civil Service Commission, the Comptroller General and other appropriate officials with respect to conflict-of-interest matters affecting more than one agency;

(E) To consult with agency heads, and with appropriate officers designated by them, as to the administration of this Act within their respective agencies and regulations issued hereunder applicable to their respective agencies;

(F) To give advice with respect to the application of this Act and regulations issued hereunder, when so requested by the President or agency heads;

(G) To undertake and conduct, in conjunction with agency heads, a study of the extent to which any of the principles of this Act should be made applicable to persons and to the employees of persons having contracts, subcontracts, licenses, or similar relationships with or from the United States; and

(H) To provide reports and information to the President and the Congress concerning the administration of this Act and conflict-of-interest matters generally.

(2) The Administrator is authorized to employ personnel and expend funds for the purposes of this Act, to the extent of any appropriations made for the purposes hereof.

(c) RESPONSIBILITY OF AGENCY HEADS.—(1) Each agency head shall be responsible for the establishment of appropriate standards within his agency to protect against actual or potential conflicts of interest on the part of employees of his agency, and for the administration and enforcement within his agency of this Act and the regulations and orders issued hereunder.

(2) Each agency head may, subject to the regulations issued by the President under subsection (a) (2), issue regulations extending, supplementing, implementing, or interpreting the provisions of this Act as applied to his agency. He shall file copies of all such regulations with the Administrator.

(3) Each agency head may conduct investigations of facts, conditions, practices, or other matters in carrying out his responsibilities and power under this subsection (c). In connection with any such investigation the agency head shall have all the powers with respect to oaths, affirmations, subpoenas, and witnesses as are provided in section 12(b) (2). The agency head may delegate any or all of his powers under this subsection (c) (3) to any officer designated by him, either generally or in particular instances.

§ 11. Preventive measures

The head of an agency may, and shall do so if so provided in regulations issued by the President, require—

(a) individuals entering Government employment with such agency and, periodically, the employees or particular categories of employees of such agency, to sign a statement that they have read an appropriate summary of the rules established by this Act and the regulations issued hereunder;

(b) employees of such agency, or particular categories thereof, to report periodically as to their non-Government employment or self-employment, if any;

(c) representatives of other persons before an agency to certify that, to the best of their knowledge, their representation will not violate section 4 or 8 or the regulations issued thereunder; and

(d) persons who are principals in transactions involving the Government to certify that, to the best of their knowledge, they have not received assistance under circumstances which would violate section 4 or 8 or the regulations issued thereunder.

§ 12. Remedies; civil penalties; procedure

(a) ADMINISTRATIVE ENFORCEMENT AS TO CURRENT GOVERNMENT EMPLOYEES.—

(1) Remedies and Civil Penalties: The head of an agency may dismiss, suspend, or take such other action as may be appropriate in the circumstances in respect of any Government employee of his agency upon finding that such employee has violated this Act or regulations promulgated hereunder. Such action may include the imposition of conditions of the nature described in subsection (b) (1).

(2) Procedure: The procedures for any such action shall correspond to those applicable for disciplinary action for employee misconduct generally, and any such action shall be subject to judicial review to the extent provided by law for disciplinary action for misconduct of employees of the same category and grade.

(b) ADMINISTRATIVE ENFORCEMENT AS TO FORMER GOVERNMENT EMPLOYEES AND OTHERS.—

(1) Remedies and Civil Penalties: The head of an agency, upon finding that any former employee of such agency or any other person has violated any provision of this Act, may, in addition to any other powers the head of such agency may have, bar or impose reasonable conditions upon—

(A) the appearance before such agency of such former employee or other person, and

(B) the conduct of, or negotiation or competition for, business with such agency by such former employee or other person, for such period of time as may reasonably be necessary or appropriate to effectuate the purposes of this Act.

(2) Procedure:

(A) Hearings.—Findings of violations referred to in subsection (b) (1) shall be made on the record after notice and hearing, conducted in accordance with the provisions governing adjudication in title 5, United States Code, secs. 1005, 1006, 1007, 1008, and 1011 (Administrative Procedure Act). For the purposes of such hearing any agency head, or any officer designated by it, is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which the agency head finds relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States at any designated place of hearing. Witnesses summoned by the agency head to appear shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(B) Judicial review.—(i) Any party to a proceeding under this subsection (b) aggrieved by an order issued by the agency head pursuant hereto, may obtain a review of such order in the court of appeals of the United States for any circuit wherein said party is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court within sixty days after the order of the agency upon a written petition praying that such order be modified or set aside in whole or in part.

(ii) A copy of such petition shall forthwith be transmitted by the clerk of the court to the agency head involved, and thereupon such agency head shall file with the court the record upon which the order complained of was entered. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part.

(iii) No objection to the order of the agency head shall be considered by the court unless such objection shall have been urged before the agency or there is reasonable ground for failure to do so.

(iv) The findings of the agency head as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material in that there were reasonable grounds for failure to adduce such evidence in the proceedings before the agency, the court may order such addi-

tional evidence to be taken before the agency and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper.

(v) The agency head may modify his findings as to the facts by reason of the additional evidence so taken and shall file with the court such modified or new findings which, if supported by substantial evidence, shall be conclusive, and his recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside in whole or in part, any such order of the agency head, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 346 and 347 of title 28. The commencement of proceedings for review under this subsection shall not, unless specifically ordered by the court, operate as a stay of the agency head's order.

(c) **RESCISSION OF GOVERNMENT ACTION.**—The President or any agency head may cancel or rescind any Government action without contractual liability to the United States where—

(1) he has found that a violation of this Act has substantially influenced such Government action; and

(2) in his judgment the interests of the United States so require under all of the circumstances, including the position of innocent third parties. The finding referred to in clause (1) shall be made in accordance with the procedures set forth in subsection (b) (2) and shall be subject to judicial review in accordance with the provisions of subsection (b) (2) (B): *Provided*, That the President or such agency head may suspend Government action pending the determination, pursuant to this subsection, of the merits of the controversy. The exercise of judgment pursuant to clause (2) of this subsection shall not be subject to judicial review.

(d) **CIVIL REMEDY FOR DAMAGES AGAINST EMPLOYEES AND FORMER EMPLOYEES.**—The Attorney General of the United States may bring a civil action in any district court of the United States against any Government employee or former Government employee who shall, to his economic advantage, have acted in violation of this Act, and in such action may recover on behalf of the United States, in partial reimbursement of the United States for its expenses of administering this Act, damages in an amount equal to three times the amount of such economic advantage.

(e) **CIVIL PENALTIES FOR ILLEGAL PAYMENTS.**—Any person who shall violate section 9 shall pay a civil penalty of not more than \$5,000, in partial reimbursement of the United States for its expenses of administering this Act. The Government employee or former Government employee involved shall not be subject to prosecution under title 18, United States Code, section 2, or title 18, United States Code, section 371, or any other provision of law dealing with criminal conspiracy, by reason of the receipt of any such payment.

(f) **PUBLICATION OF CERTAIN FINDINGS AND DECISIONS.**—Whenever the head of any agency or the President, exercises the authority conferred by subsections (a), (b), or (c) of this section, copies of the findings and decision therein shall be filed with the President and shall be published at least once each year as part of a volume collecting such findings and opinions. Such volumes shall be made available for public inspection and shall also be made available for distribution or sale to interested persons.

(g) **INTERESTS OF NATIONAL SECURITY.**—When any provision of this Act requires publication of information and the President finds that publication of part or all of such information is inconsistent with national security, he may suspend the requirement of such publication to the extent and for such period of time as he shall deem essential for reasons of national security.

(h) **STATUTE OF LIMITATIONS.**—No administrative or other action under subsections (b), (c), (d), or (e) of this section to enforce any provision of this Act shall be commenced after the expiration of six years following the occurrence of the alleged violation.

TITLE II—CRIMINAL PENALTIES

§ 21. Acts in violation of Executive Conflict of Interest Act

Title 18 of the United States Code is amended by adding a new chapter thereto, to be designated chapter 16 and reading as follows:

CHAPTER 16—CONFLICTS OF INTEREST

§ 301. Acts in violation of Executive Conflict of Interest Act

Any person who shall purposely or knowingly violate any provision of the Executive Conflict of Interest Act shall be fined not more than \$10,000, or imprisoned for not more than one year, or both. For purposes of this section, the terms 'purposely' and 'knowingly' shall have the respective meanings set forth in subsections (a) and (b):

“(a) ‘Purposely’: A person acts purposely with respect to a material element of an offense when—

“(1) if the element involves the nature of his conduct or a result thereof, it is his conscious object to engage in conduct of that nature or to cause such a result; and

“(2) if the element involves the attendant circumstances, he knows of the existence of such circumstances.

“(b) ‘Knowingly’: A person acts knowingly with respect to a material element of an offense when—

“(1) if the element involves the nature of his conduct or the attendant circumstances, he knows that his conduct is of that nature or he knows of the existence of such circumstances; and

“(2) if the element involves a result of his conduct, he knows that his conduct will necessarily cause such a result.”

TITLE III—AMENDMENT AND REPEAL OF EXISTING LAWS

§ 31. Amendment of title 18, United States Code, sections 216 and 1914

Section 216 of chapter 11 and section 1914 of chapter 93 of title 18 of the United States Code are each amended by adding the following as a new paragraph to precede the present text of each new section:

“From and after the effective date of the Executive Conflict of Interest Act, this section shall not apply to, (1) any person who is a Government employee as defined in section 2(f) of that Act, and (2) any act of another person which is directed toward such a Government employee.”

§ 32. Amendment of title 18, United States Code, sections 281, 283, and 434

Sections 281 and 283 of chapter 15 of title 18 of the United States Code are each amended by deleting the second paragraph thereof. Each of such sections is further amended and section 434 of chapter 23 of title 18 of the United States Code is amended by adding the following as a new paragraph to precede the present text of each such section:

“From and after the effective date of the Executive Conflict of Interest Act, this section shall not apply to any person who is a Government employee as defined in section 2(f) of that Act.”

§ 33. Amendment of title 18, United States Code, section 284

Section 284 of chapter 15 of title 18 of the United States Code is amended by adding the following as a new paragraph to precede the present text of such section:

“From and after the effective date of the Executive Conflict of Interest Act, this section shall not apply to any person who has been a Government employee as defined in section 2(f) of that Act.”

§ 34. Amendment of title 22, United States Code, section 1792(a)

Section 532(a) of the Mutual Security Act of 1954 (68 Stat. 859), as amended by section 10(d) of the Act of July 18, 1936 (70 Stat. 561; 22 U.S.C. 1792(a)), is amended to read as follows:

“(a) Service of an individual as a member of the Board established pursuant to section 308 of this Act or as an expert or consultant under section 530(a) shall not be considered as employment or holding of office or position bringing such individual within the provisions of section 6 of the Act of May 22, 1920 (5 U.S.C. 715), or section 212 of the Act of June 30, 1932 (5 U.S.C. 59a), or any other Federal law limiting the reemployment of retired officers or employees or governing the simultaneous receipt of compensation and retired pay or annuities. Contracts for the employment of retired military personnel with specialized research and development experience, not to exceed ten in number, as experts or consultants under section 530(a), may be renewed annually, notwithstanding section 15 of the Act of August 2, 1946 (5 U.S.C. 55(a)).”

§ 35. Amendment of title 5, United States Code, section 30r(d)

Section 29(d) of the Act of August 10, 1956 (70A Stat. 632; 5 U.S.C. 30r(d)), is amended to read as follows:

“(d) When he is not on active duty, or when he is on active duty for training, a reserve is not considered to be an officer or employee of the United States or a person holding an office of trust or profit or discharging any official function under, or in connection with, the United States because of his appointment, oath, or status, or any duties or functions performed or pay or allowances received in that capacity: *Provided, however,* That a reserve on active duty for training shall be deemed an employee of the United States for purposes of the Executive Conflict of Interest Act.”

§ 36. Repeal of particular substantive restraints

The following sections are repealed:

(a) Section 190 of the Revised Statutes (5 U.S.C. 99) (relating to postemployment prosecution of claims by employees in departments); and

(b) Section 244 of the Revised Statutes (5 U.S.C. 254) (relating to certain business interests of clerks in the Treasury Department).

§ 37. Repeal of particular substantive restraints applicable to retired officers

The following sections are repealed:

(a) Section 1309 of the Act of August 7, 1953 (67 Stat. 437; 6 U.S.C. 59c) (relating to loss of retirement pay by retired commissioned officers engaged in certain selling activities).

(b) Section 6112 of chapter 557 of title 10 of the United States Code (relating to the loss of pay or retirement pay by certain officers who sell naval supplies to the Navy Department).

§ 38. Repeal of exemptions from particular conflict-of-interest statutes

The following sections are repealed:

(a) Section 173(c) of chapter 7 of title 10 of the United States Code (providing certain conflicts exemptions for advisers to the Secretary of Defense).

(b) Section 1583(b) of chapter 81 of title 10 of the United States Code (authorizing conflicts exemptions for persons employed by the Secretary of Defense to serve without compensation).

(c) Section 5153(d) of chapter 513 of title 10 of the United States Code (providing certain conflicts exemptions for members of the Naval Research Advisory Committee).

(d) Section 807 of the Act of August 2, 1954 (68 Stat. 645; 12 U.S.C. 1701h) (providing certain conflicts exemptions for members of advisory committees of the Housing and Home Finance Agency).

(e) Section 5 of the Act of June 4, 1956 (70 Stat. 243; 16 U.S.C. 934) (providing certain conflicts exemptions for commissioners and members of advisory committees appointed under the Great Lakes Fishery Act of 1956).

(f) Section 5 of the Act of September 7, 1950 (64 Stat. 778; 16 U.S.C. 954) (providing certain conflicts exemptions for commissioners and members of advisory committees appointed under the Tuna Conventions Act of 1950).

(g) Section 5 of the Act of September 27, 1950 (64 Stat. 1068; 16 U.S.C. 984) (providing certain conflicts exemptions for commissioners and members of advisory committees appointed under the Northwest Atlantic Fisheries Act of 1950).

(h) Section 5 of the Act of August 12, 1954 (68 Stat. 698; 16 U.S.C. 1024) (providing certain conflicts exemptions for commissioners and members of advisory committees appointed under the North Pacific Fisheries Act of 1954).

(i) Section 1003 of the Act of September 2, 1958 (72 Stat. 1603; 20 U.S.C.

583) (providing certain conflicts exemptions for members of advisory committees and information councils appointed under the National Defense Education Act of 1958).

(j) Section 14(f) of the Act of May 10, 1950 (64 Stat. 154155; 42 U.S.C. 1873 (f)) (providing certain conflicts exemptions for members of the National Science Board and committees and commissions appointed under the National Science Foundation Act of 1950).

(k) Section 163 of the Atomic Energy Act of 1954 (68 Stat. 951), as amended by section 2 of the Act of September 21, 1959 (73 Stat. 574; 42 U.S.C. 2203) (providing certain conflicts exemptions for members of the General Advisory Committee and advisory boards appointed under the Atomic Energy Act of 1954).

(l) Section 1(t) of the Act of June 19, 1951 (65 Stat. 87; 50 U.S.C. App. 463(a)) (providing certain conflicts exemptions for particular Selective Service officials).

(m) Section 113 of the Renegotiation Act of 1951 (65 Stat. 22), as amended by section 13 of the Act of August 1, 1956 (70 Stat. 792; 50 U.S.C. App. 1223) (providing certain conflicts exemptions for employees of departments and agencies to which the Renegotiation Act of 1951 is applicable and of the Renegotiation Board).

(n) Section 7(b) (4) of the Act of August 9, 1955 (69 Stat. 582; 50 U.S.C. App. 2160(b) (4)) (providing certain conflicts exemptions for persons serving without compensation under the Defense Production Act of 1950).

TITLE IV—MISCELLANEOUS PROVISIONS

§ 41. Short title

This Act shall be known and may be cited as the "Executive Conflict of Interest Act".

§ 42. Effective date

This Act shall take effect ninety days after the date of its enactment, except that section 37 shall not take effect until the effective date of the regulations issued by the President pursuant to section 8(e).

[S. 637, 87th Cong., 1st sess.]

A BILL To amend the Administrative Procedure Act to provide for the disclosure of certain communications received by Government agencies from Members of Congress with respect to adjudicatory matters, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5 of the Administrative Procedure Act (5 U.S.C. 1004) is amended by adding at the end thereof the following new subsection:

"(e) COMMUNICATIONS TO AGENCY.—Whenever any matter is pending before any agency for adjudication, and any communication with respect to the status, disposition, or merits thereof is received by such agency from any Member of Congress the agency shall make such communication, or a true and correct copy thereof, together with a true and correct copy of any response made thereto by the agency, a part of the public record of such adjudicatory proceeding. The true and correct substance of any oral communication received by any agency from any Member of Congress, and the true and correct substance of any oral response made by any agency to any communication received from any Member of Congress, with respect to the status, disposition, or merits of any such adjudicatory matter, shall be reduced to writing by any member, officer, or employee thereof who receives such communication or responds thereto, and such writing shall be treated as a written communication received by any agency, or a written response made by the agency thereto, as the case may be; and, in addition thereto, a copy thereof shall be sent to the Member of Congress concerned. As used in this subsection—

"(1) The term 'agency' includes any member, officer, or employee of any agency; and

"(2) The term 'Member of Congress' includes (A) any Delegate to Congress or Resident Commissioner in Congress, (B) any employee of any Member of Congress, Delegate to Congress, or Resident Commissioner in Congress, and (C) any employee of any joint committee of the Congress or any committee of either House of the Congress."

Senator JAVITS. To sum it up, Mr. Chairman, I make the following points:

First, a bill reported out should include a provision for communications to Government agencies by Members of Congress and in that I refer to S. 637, which has been incorporated.

Second, H.R. 8140 to be confined to the executive department, and there should be a separate title for Members of Congress with important consideration given by this committee to the need for maintaining the independence and integrity of the Congress in respect of a code of ethics by advising the administration of a code and its enforcement in the Congress itself.

Third, the need for administrative procedures as well as criminal sanctions in the law.

And, fourth, my endorsement of the particular recommendations made by the Association of the Bar of a specific character to which I referred by section in respect of H.R. 8140.

Senator HRUSKA. To what committee was Senate Concurrent Resolution 10 referred?

Senator JAVITS. Senate Concurrent Resolution 10 was referred to the Committee on Rules and Administration. And, as is customary here, Mr. Chairman, I believe that by arrangement between the committees if it is considered desirable the subject could very easily be handled by you in this bill.

Senator HRUSKA. Does that conclude your statement?

Senator JAVITS. It concludes my statement.

Senator HRUSKA. Thank you very much for coming. The information you have given us will be very helpful.

At this point in the record there will be inserted a letter from the Department of Health, Education, and Welfare dated June 21, 1962.

(The letter referred to is as follows:)

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
June 21, 1962.

HON. JAMES O. EASTLAND,

Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This report is in regard to H.R. 8140, a bill to strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes, as passed by the House of Representatives, and now before your committee. The following comments are addressed to those aspects of the bill that could have a substantial impact on the program interests of this Department. The bill's proposed section 203 of title 18, United States Code, would bar a special Government employee who serves as such for more than 15 days during a 1-year period, from receiving compensation for services rendered in relation to a matter in which the United States is a party or has a direct and substantial interest, and which is pending in the agency in which the employee is serving. Similarly, such employees would be barred by the proposed section 205 from acting as agents before the agency, whether or not for compensation, in matters pending before it during their employment. We believe that this disability is needlessly severe, and would hamper the Department in obtaining and retaining the services of eminent physicians, scientists, and educators as members of its advisory committees. In the Public Health Service, for example, there are 14 public advisory committees established by statute or pursuant to statutory direction. Including the members of over 150 additional advisory committees, the Public Health Service employs some 1,800 consultants. Many of these consultants serve the Department for more than 15 days each year. Among those who serve more than 15 days, particularly of those who are utilized by the National Institutes of Health, some are

or may expect to be employed on matters pending before the Department during the period for which they have made themselves available for service as a special Government employee. For example, in the field of medical research funds used or supplied by the National Institutes represent 43 percent of the Nation's entire medical research support from all sources. Therefore, in view of the limited number of capable scientists, it is not unlikely that a research scientist who is a member of, say, the National Advisory Health Council will, during his membership, be called upon to conduct research with funds supplied to his university for this purpose by NIH under a continuing grant which is renewable from time to time, and therefore still before the agency. If the conduct of such research by advisory council members were to be prohibited, the practical consequences would be the refusal of any scientists to accept appointments to our advisory councils, with a consequent deterioration of the councils' work.

A related problem is that of the university official who is a member of an advisory council that is charged with the responsibility of recommending action to the Surgeon General on a grant application from the school of which the official may be dean, president, or agent for such matters. The current practice is for the official to disqualify himself from participating in the Council's decision on such application. Under H.R. 8140, such official would be barred from acting as an adviser or consultant to the Department (whether or not as a Council member) for more than 15 days during the preceding 365 consecutive days, if such grant application were pending before the Department. Here, again, as a practical matter this circumstance would cause many of the most able and responsible persons to decline Council membership.

The bill would also prevent certain Advisory Council members from engaging in scientific work in areas wholly unrelated to their official duties—for example, work in relation to a new drug application before the Food and Drug Administration—although in reality there would be no opportunity whatsoever for any member to gain confidential information or other benefits from his employment as a Council member that could aid him in such scientific work.

Our discussion of these problems has assumed that the proposed section 202(a) would classify a member of an advisory committee as a "special Government employee" for the entire period of his appointment. This would alter the general approach of existing law, as interpreted by the President's "Memorandum of February 9, 1962" (27 F.R. 1341 and 1342), which treats consultants and advisers as Government employees only on those days on which they are actually employed by the Government, except for those whose Government employment during the period of their availability occupies a substantial portion of that period (administratively determined to be 40 percent or more) or affords their principal means of livelihood.

We agree that a special Government employee should be barred during the entire period of his availability for Government service (e.g., the period of his membership on any advisory council) from acting privately in relation to a particular matter in which, as a Government employee, he has at any time personally participated, or which has been a subject of his official responsibility within 2 years. Even if this bar were not found in section 203 or section 205 (and these sections should certainly be clarified in this regard either by amendment or through legislative history) it would follow from the limitations placed by section 207 on the activities of former Government employees. However, insofar as possible conflicts of interests may be involved, we see no need to prohibit a special Government employee from participating in his private capacity in matters pending before the agency that do not bear upon or affect his official functions. We would therefore delete the provisions in sections 203 and 205 which prohibit a special Government employee who serves more than 15 days each year from participating in a particular matter solely because it is pending before his agency.

If this recommendation is unacceptable, then we urge that the 15-day period referred to be raised. The increase to 60 days, which we understand is being recommended by the Department of Justice would be adequate to except from this bar members of our advisory councils.

A further problem is raised by the proposed section 207. Under existing law (18 U.S.C. section 284 and 5 U.S.C. 99) a former employee of the United States is prohibited, for 2 years from the termination of his employment, from acting as agent or attorney in the prosecution of any claim against the Government involving any subject matter directly connected with his former employment, or

pending in any department during such employment. The bill would replace these prohibitions with, among other things, a lifetime ban upon the performance of services, by such former employee, as agent or attorney in connection with virtually any specific activity in which the United States has a direct and substantial interest and in which the employee participated personally and substantially during his employment.

One consequence of broadening the class of prohibited activities is to obscure, in some degree, the meaning of the word "agent." It is not entirely clear, for example, that a former Government officer or employee would be able to assist, after termination of his Federal employment, in the performance of work under a Government grant or contract upon which he advised in his official capacity.

While this result may be desirable in the generality of cases in order to assure that the performance of Government functions will not be improperly influenced by the expectation of future employment (see, for example, the proposed section 201, which would punish an employee who was influenced in the performance of an official act by the promise of such employment), it is likely to injure the Government, particularly in view of the lifetime character of the prohibition, in occasional cases in which highly specialized medical or other scientific research is contracted for, or promoted by grant, and a member of an NIH advisory council, or a regular Government employee, who dealt with the grant or contract in his official capacity, is at some later date desired by the recipient for employment on the research. For example, in the highly specialized field of mycology (the study of molds and fungi), one of very few experts in the United States is a member of the National Advisory Allergy and Infectious Disease Council; in the equally specialized field of the viral etiology of cancer, one of the leading experts is a member of the National Advisory Cancer Council. It would be in the interests of the Government, in such cases, to afford these experts the opportunity to administer or participate in research programs in respect to which they had had official functions, provided that it clearly appears that the performance of those functions was not influenced by the prospect of such employment, and that such employment was in the interests of the Government. We defer to the Department of Justice, which we understand will propose amendments to your committee, on the appropriate means of resolving these and certain additional problems that the bill presents for us.

Subject to consideration of the Justice Department proposals, we recommend that the bill be enacted.

We are advised by the Bureau of the Budget that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely,

WILBUR J. COHEN,
Assistant Secretary.

Senator HRUSKA. A statement submitted by the Reserve Officers Association, will also be placed in the record at this point.
(The statement referred to is as follows:)

STATEMENT BY COL. JOHN T. CARLTON, EXECUTIVE DIRECTOR, RESERVE OFFICERS ASSOCIATION, TO THE SENATE JUDICIARY COMMITTEE ON H.R. 8140, AN ACT TO STRENGTHEN THE CRIMINAL LAWS RELATING TO BRIBERY, GRAFT, AND CONFLICTS OF INTEREST, AND FOR OTHER PURPOSES

Mr. Chairman and members of the committee, we appreciate the opportunity of presenting the views of this association on this important piece of legislation.

We will confine our remarks to the impact of this bill on military personnel in a reserve or retired status.

The House report on H.R. 8140 (Rept. 748, 87th Cong., 1st sess.) contains, on page 10, a short discussion on the status of retired officers and concludes that the bill should not change the status of personnel of this category even though the report admits that they are in a peculiar and complex position.

An attempt was made to clarify the difficult problem of these people when H.R. 11474 and H.R. 9682 (the so-called "Hébert bill") were being considered on the floor of the House in the 86th Congress. Those parts of the bill which would have included retired personnel in the provisions of sections 281 and 283 of title 13, United States Code, were stricken from the bills on a sustained point of order and a substitute clean bill (H.R. 10959) which excluded these people was passed by the House without debate or discussion on the

issue contained herein. H.R. 10959 subsequently died without action by the Senate.

As a consequence, military personnel, retired from the service after long and honorable careers, are very much in a quandary as to what their legal status is if they are to engage in activities which the bill before you takes into consideration. In justice to these highly motivated and qualified personnel, it would appear that these matters should be clarified as soon as possible. We believe this would be of direct and immediate benefit not only to the individuals, themselves, but to the organizations who might seek to employ them and the governmental activities with who they may have dealings. We believe that the simplest solution to this entire problem would be to include these people in the same general coverage as all other persons described as being within the purview of H.R. 8140.

For the foregoing reasons, we recommend that section 207 of title 18 of the United States Code be rewritten to make it clear that retired military personnel are subject to its provisions and to the other provisions of H.R. 8140 in the same manner as all others included in its coverage. We believe that the bill as presently written could be subject to varied interpretations. The use of specific language describing these persons would clarify this question when future interpretations are made.

To give further concrete effect to this recommendation, we recommend that that part of section 2 of the bill beginning on line 20 and ending on line 24 of page 20 which reads as follows "(except as they may apply to retired officers of the Armed Forces of the United States)" be deleted.

We further believe that two very important classes of persons have been omitted from the definition of the "special Government employee" as contained in the proposed section 202, title 18, United States Code, contained in the bill.

The first of these are those military personnel who are now on a 1-year tour of duty either voluntarily or involuntarily to augment the Armed Forces during the Berlin contingency.

These personnel, unless specifically exempted, will find in some cases that their tour of duty in support of national policy may inhibit them from pursuing business activities which are under the terms of this bill. We do not feel that these people, after having made the sacrifice that they have, should be subjected to this additional restriction in their private pursuits when they return to civilian life.

There is a smaller but rather significant group of military personnel who, because of their special qualifications or because of other peculiar circumstances, are called to duty from time to time for tours of duty to advise and assist the Armed Forces in specialized activities. These are not career personnel, but have special talents which are necessary to and of benefit to the armed services for short periods of time, but often in excess of 135 days. They often fulfill this duty at considerable sacrifice to their own professional careers and we believe they should not be penalized because of these activities.

For these reasons we believe that the definition of a "special Government employee" contained in section 202, title 18, United States Code, should be expanded to include "those military personnel called to active duty, voluntarily or involuntarily, under the provisions of Public Law 87-117, and those military personnel who served specified tours of active duty for the benefit of and funded by any of the armed services."

We believe that the changes proposed above will eliminate the various misunderstandings pertaining to reserve and retired military personnel engaged in activities within the purview of H.R. 8140 and be of direct benefit to themselves, their employers, and Government.

Senator HRUSKA. Senator Eastland has directed that we insert the following in the printed record: A letter and attachments addressed to him by the Honorable Henry M. Jackson, Senator from Washington, and a letter addressed to Senator Eastland from Judge William F. Smith of the Third Circuit Court of Appeals. The committee will recess, subject to the call of the Chair.

(The material referred to follows:)

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
June 23, 1962.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR JIM: As you know from our discussions and previous correspondence, H.R. 8140, the conflict-of-interest bill, is of interest to the Committee on Armed Services because of the use of the criminal provision as a guide in determining whether or not statutory nominees should be required to sell their securities in order to avoid a conflict of interest between their position and their personal holdings.

There has been an exchange of letters between myself and Mr. Katzenbach, the Deputy Attorney General, on the matter of this legislation as it pertains to the problem of the Senate Committee on Armed Services in connection with approval of statutory nominees.

I am attaching copies of the exchange of letters which I would appreciate your making a part of the printed hearings of last Thursday on H.R. 8140. The exchange could be useful legislative history in connection with any future use of the newly proposed language as a guide in connection with the confirmation matter.

Sincerely yours,

HENRY M. JACKSON.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., June 20, 1962.

HON. HENRY M. JACKSON,
U.S. Senate, Washington, D.C.

DEAR SENATOR JACKSON: This is in response to your letter of May 16, 1962, with respect to H.R. 8140 and to the efforts being considered by the administration to meet by regulation the recruiting problems which are raised by 18 U.S.C. 434 (the section of the criminal law which prohibits officials from acting on behalf of the Government in dealings with business entities in which they have an interest). These problems also would be raised by section 208 of H.R. 8140, which would replace section 434. In your letter you emphasize the need for recruiting able individuals for service in the executive branch and request information on what administrative measures are being considered to alleviate the recruiting problem.

At the outset, I should like to assure you that your concern with the problem of obtaining the services of individuals from private life with varied abilities and talents is fully shared by the administration. This concern was emphasized in the President's April 27, 1961, special message to Congress on conflicts of interest and was reiterated in his memorandum to department and agency heads of February 9, 1962. The problem was also emphasized in the Attorney General's opinion of January 31, 1962. H.R. 8140 was drafted with a full realization of this factor and is intended to relieve the recruitment problem to the extent compatible with ethical standards. We agree with you, however, that enactment of the bill will not eliminate the need for administrative measures to deal with the problem.

Nor will enactment of the bill eliminate the undue financial burden sometimes imposed upon a Presidential nominee in circumstances in which divestiture of stockholding is considered appropriate before he takes office. Although the bill would not, in my opinion, aggravate this problem, its solution will have to be found elsewhere. In the meantime, the administration is actively exploring possible solutions of the divestiture problem. Some of the possibilities are discussed below.

The administration's concern with this problem and its intention to perform a "screening function" in relation to it was clearly contemplated by the President in his special message of April 27, 1961, to the Congress. In the discussion of ethics problems which could be dealt with directly by Presidential action, the President said in pertinent part:

"In carrying out the provisions of law, I will apply Government-wide standards to the continuance of property holdings by appointees to the executive

branch. The law prohibits any conflict of the public and private interest of employees of the Government. The Senate, in the exercise of its power of confirmation, has taken the lead in requiring that Presidential appointees sell their property holdings in cases where retention of property might result in such a conflict of interest. The problem of property ownership by Executive appointees is properly a matter of continuing congressional concern, and I welcome the initiative taken by the Jackson Subcommittee on Conflict of Interest. At the same time, the executive branch has an obligation to insure that its appointees live up to the highest standard of behavior. It is to carry out this responsibility that I will apply general standards governing the ownership of property by Presidential appointees—standards which will insure that no conflict of interest can exist. It is my hope that these regulations will aid the Senate in the uniform exercise of its own responsibility.”

The President, before making a nomination, will consider the financial interest of the person, and his spouse or minor child and will determine if they are of a nature which will create a conflict which would require disqualification of the person from his anticipated official duties. If any substantial interference with official duties is anticipated, the person being considered is not likely to be nominated in the absence of compelling reasons unless conflicting interests are divested or appropriate arrangements are made to insulate him from these interests. In any event, I can assure the committee that it will be fully informed of all relevant considerations of this nature and that the submission of a nominee's name will mean that his usefulness to the Government and the ethical considerations involved will have been given careful executive branch scrutiny.

The administration is, in addition, actively exploring methods of avoiding the imposition of undue financial burdens upon the prospective nominee or his family in those circumstances in which divestiture may be appropriate. Divestiture sometimes requires financial rearrangements which many individuals might hesitate to make in order to accept a Government appointment. Paramount among the divestiture problems is the tax consequence of a forced sale of securities, which may result in serious financial burdens or losses. The avoidance or minimizing of such consequences is a matter which the administration is investigating in an effort to find an equitable solution.

Possible methods of dealing with this problem which are being studied include a plan to permit the nominee to convert a security deemed objectionable into other securities without payment of a capital gains tax, if any should be due, but requiring him to assign to the new stock the cost basis of the old. Thus, upon any subsequent sale of the new securities, his gain for Federal income tax purposes would be the difference between the proceeds of the sale and the cost of the securities which he had converted upon his appointment to Federal office. Another plan would permit the nominee to report for income tax purposes only half the capital gain realized in the year of a forced divestiture if the entire amount of the proceeds were invested in other property. The other half of the gain would be used to reduce the cost basis of the newly acquired investment.

The examples given should not be considered to exhaust the potential means of providing relief from the harshest aspects of forced divestiture. Further careful study is required to assure that any plan recommended adequately serves the purpose for which it was intended, and the administration is not yet prepared to recommend any of the possible plans described above or any combination of them.

Your letter also expresses concern with the possibility that the prohibition contained in H.R. 8140 against participation by Government officials in transactions in which not only they themselves, but also their spouses and children, have a financial interest, may prove a hindrance to the Committee on Armed Services in approving Presidential nominees. Of course, section 208 does not concern itself with the qualifications of a nominee for office nor does it disqualify anyone for office. Like 18 U.S.C. 434, section 208 merely provides that a person in office shall not engage in certain activities which would create a conflict of interest. However, concern as to the effect of section 208 on the appointive process arises, as we understand it, because the committee considers situations which may arise under 18 U.S.C. 434 as one of its guides in determining the qualifications of a Presidential nominee. Section 434 purports to apply only to financial interests which are personal to the appointee and thus does not necessarily entail the more searching inquiry as to family holdings which might be thought to be required by the comparable but broader prohibition contained in section 208 of H.R. 8140.

To the extent it is considered relevant by the committee in passing on the qualifications of a Presidential nominee, I do not believe that section 208 would compel the committee to apply a substantially different test than it does under section 434 insofar as consideration of the financial interests of the nominee and his spouse or children is concerned. This opinion is based upon what I consider to be the meaning of the word "child" as used in section 208, the necessary implications arising from this interpretation and the likelihood that in most cases the holdings of a wife would be too remote or inconsequential to affect the integrity of the nominee.

When section 208 refers to a "child," I believe that the intent is to include only minor children. Once a child has reached his majority, he should no longer be regarded as possessing such a close relationship to his parents that a financial interest of his own would be of such consequence to a parent that it could affect the integrity of the services of a parent to the Government. Although there undoubtedly would be cases in which an emancipated child's interest would be of real consequence to his parents, it seems clearly inequitable to legislate such a broad concept of family unity as would be involved in including within section 208 a financial interest of a child who has reached his majority. While I do not think it is necessary, I would have no objection to an amendment to section 208 which would make express that the reference to "child" in the section means "minor child."

If it is accepted that section 208 refers only to minor children, then the committee, in passing upon the qualifications of a nominee, is confronted with a situation which is not very different from that which it would face if 18 U.S.C. 434 were its guide. I assume that normally the committee, relying upon section 434, would not consider from a conflict-of-interest viewpoint the financial interests of a spouse and minor child of a nominee. Although section 208 includes spouses and minor children, it permits exclusion from its coverage of interests which are not so substantial as to be likely to affect, or which are too remote or inconsequential to affect, the integrity of the service of an official. This exclusion, it seems to me, would rule out the property holdings of most spouses or minor children as financial interests which the committee might consider as possible subjects for divestiture. This would be particularly true with respect to the separate property of a spouse, which normally is not subject to any control or *inter vivos* property rights of his or her marriage partner.

In my opinion, only in an exceptional case would a financial interest of a spouse or child be deemed to be a disqualifying financial interest within the purview of section 208. Ownership by a spouse of a controlling interest in a corporation transacting business with the Department of Defense could not, perhaps, be ignored. Also, in a situation in which the nominee exercises legal control over the property of his spouse, the interest of the spouse could be considered a financial interest within the contemplation of section 208 unless excluded by the exception of nonsubstantial interests. However, such situations, in my opinion, would be the exception, rather than the rule. In the ordinary case, a property holding of a spouse or minor child would seem to come within the subsection (b) exclusion.

Accordingly, it seems to me that the committee would be justified in disregarding the property interests of a spouse or minor child except in unusual circumstances such as those to which I have referred. Since this, I believe, is essentially the procedure followed by the committee at the present time, it appears to me that enactment into law of section 208 would not create for the committee a standard significantly different from that prevailing under 18 U.S.C. 434 insofar as consideration of the financial interests of a spouse or minor child is concerned. And, since the administration must consider the substantiality of the interests of the spouse and minor children in the course of "screening" prospective nominees, the conclusions reached by the executive branch and made available to the committee will undoubtedly be helpful to it with respect to the problem of these financial interests.

Thus, in my view, section 208 would not aggravate the problem of the Armed Services Committee in passing upon Presidential nominees nor render more difficult the task of inducing them to accept appointive office. Moreover, I anticipate that acceptance of public office may be facilitated as a result of the steps outlined above currently being considered by the executive branch.

Sincerely yours,

NICHOLAS DEB. KATZENBACH,
Deputy Attorney General.

MAY 16, 1962.

HON. NICHOLAS DEB. KATZENBACH,
Deputy Attorney General, Department of Justice,
Washington, D.C.

DEAR MR. KATZENBACH: As you know, I am chairman of a Senate Armed Services subcommittee which is examining the matter of the committee policy on the divestment of securities by civilians who are nominated to statutory positions in the Department of Defense.

I am writing first with respect to H.R. 8140, which is pending before the Senate Committee on the Judiciary, and second, with regard to what efforts the administration is considering for meeting by regulation rather than by statute some of the recruiting problems which have resulted from the conflict-of-interest provision.

There is universal agreement that the Criminal Code should be sufficiently strong and clear to prevent irregularity on the part of Government officials and to maintain the strongest possible public confidence in the conduct of Government business. There is, however, at the same time the equally important problem of attracting to high Government positions private citizens of some means who desire to serve for periods of time in high positions and thereafter return to private life. The conflict-of-interest provision often presents problems which in no way relate to the integrity of the individual concerned.

The present conflict-of-interest provision (sec. 434, title 18), even though part of the Criminal Code, is considered relevant by the Senate Committee on Armed Services in connection with the requirement for divestment of securities by statutory nominees. It has been gradually felt that the nominee must avoid being placed in the position where, as a result of his private holdings, he might be in violation, even of a technical nature, of the conflict-of-interest provision. In H.R. 8140, section 434 will be repealed and replaced with a new provision which would prohibit a Government official from participating in a wide range of transactions on behalf of the Government in matters in which he, his wife, or children have a financial interest is insubstantial or unless his interest is too remote to affect the integrity of his services.

I would like to urge that the administration, in its support for a revision of the punitive provision of the conflict-of-interest rule, recognize the equally important need of easing to the extent possible problems of recruiting able private citizens, often with means, for positions in the executive branch. You might want to consider especially the problems which could be created by the inclusion of the financial interests of wives and children within the new conflict rule. These interests are not within the scope of existing law.

We realize the inherent difficulties in attempting to accommodate by statute the dual problem of a strong criminal conflicts provision and at the same time the problem of easing the task of obtaining for Government service able executives who might be placed in positions resulting in a technical violation of the conflict rule.

It is my understanding that in accordance with the President's message on the subject the administration is considering certain alternatives which can be accomplished by regulation for the purpose of alleviating the recruiting problem.

It would be most helpful to the subcommittee if you could advise us of the efforts being made along this line.

Sincerely yours,

HENRY M. JACKSON, *U.S. Senator.*

U.S. COURT OF APPEALS FOR THE THIRD DISTRICT,
Newark, N.J., June 15, 1962.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

HONORABLE AND DEAR SENATOR EASTLAND: The proposed revision of chapter 11 of the United States Code is intended to "strengthen the criminal laws relating to bribery, graft, and conflict of interests, etc." The members of the Judicial Conference of the United States, at its meeting in March of 1962, recommended disapproval of section 205 of the proposed legislation, but only in its application to part-time U.S. commissioners. There are no objections to the other sec-

tions of the proposed bill. The members of the Conference are concerned because the broad coverage of the said section may adversely affect the efforts to maintain an efficient "commissioner system" staffed by competent officers. We appreciate this opportunity to place before the committee the reasons which prompted the recommendation.

OFFICE OF U.S. COMMISSIONER

The office of U.S. commissioner has become increasingly important because of the many essentially judicial functions performed by the commissioner. He receives complaints in criminal cases, determines questions of probable cause incident to the issuance of warrants, conducts preliminary hearings, fixes bail and approves bond, entertains and hears applications for the discharge of indigent prisoners, presides in removal hearings, issues certain attachments, supervises the settlement of controversies arising out of the nonpayment of seamen's wages, and takes and certifies depositions. There are many commissioners who try petty offenses under special designations by the district courts.

The proper discharge of these many functions requires a knowledge of the law. We are of the opinion that the office can be best filled by a lawyer and we have therefore consistently encouraged the appointment of lawyers. As of May 16, 1962, there were 692 U.S. commissioners, and of this number 469 were practicing lawyers. These lawyers, except for a very few, serve on a part-time basis; their primary occupation is the practice of law. We are of the opinion that their services are important to the fair administration of the criminal laws.

A total of 24 commissioners report that they have no occupation except that of U.S. commissioner, but only 6 of these are recognized as full-time appointees by the Administrative Office of the U.S. Courts. The 668 commissioners having other vocations have reported their occupations as follows:

Clerks of district courts.....	8
Deputy clerks of district courts.....	50
Referees in bankruptcy.....	4
Court reporters.....	1
Practicing members of the bar.....	469
Miscellaneous.....	136

We should add that 23 U.S. commissioners, serving in rural areas and reported as having other "miscellaneous" occupations, are members of the bar, and may be engaged in the private practice of law as one of two or more other types of employment.

While the number of U.S. commissioners serving at the present time is substantial (692 as compared, for example, to 308 district judgeships), it is not likely that the need for commissioners—particularly part-time commissioners—will decrease in the foreseeable future. It is essential that there be a U.S. commissioner available in the smaller communities of the predominantly rural districts. The terms of court are held infrequently in some of the designated places for holding court and it is therefore necessary that in these places a commissioner be available as a representative of the court. Part-time commissioners have been employed to meet the need in predominantly rural districts since before 1800; thus far no satisfactory substitute for the system has been developed.

COMPENSATION OF COMMISSIONERS

The U.S. commissioners are paid on a statutory fee basis, and their annual compensation, except for a comparatively small number, is minimal. This is reflected in the summary hereto annexed. It is significant that during the calendar year of 1961, 498 commissioners earned less than \$3,000, and of this number 372 earned less than \$1,000. As of May 16, 1962, there were only 50 commissioners whose earnings for each of 3 consecutive years were sufficient to make them eligible for the benefits available under the Civil Service Retirement

Act, 5 United States Code 2252(g). The figures demonstrate another point which cannot be overlooked: a "commissioner system" in which the commissioners function on part time is the only one economically feasible.

A realistic picture of just how modest a financial return is realized by the average U.S. commissioner can be obtained by concentrating on a particular district: the eastern district of South Carolina. There are part-time commissioners stationed at Sumter, Orangeburg, Columbia, Bennettsville, Charleston, Aiken, Beaufort, and Florence. During the calendar year of 1961, one commissioner earned \$3,000, one earned \$2,200, one earned \$2,000, and one earned \$1,200; the other four earned less than \$1,000 during the same period. The total compensation paid eight part-time commissioners was less than that usually paid to a full-time referee in bankruptcy. There are many districts in which the situation is comparable.

EFFECT OF REVISION

The proposed revision of section 205, as we interpret it, would prohibit a U.S. commissioner from acting as an agent or attorney "before any department, agency, court, court-martial, officer, or any civil, military, or naval commission in connection with any proceeding, application, and request for a ruling or other determination, contract, claim, controversy, etc. * * *." The provision, if enacted, would prohibit a part-time commissioner, who is also an attorney engaged in private practice, from handling any Federal matter in the course of his private practice; he would be completely foreclosed from the field of Federal practice. The only objection of the Judicial Conference to the provision is to the comprehensive coverage as applied to part-time commissioners.

RECOMMENDATION

We recognize that the conflict-of-interests problems which could arise in the judicial branch of the Government should be treated as important, and we have endeavored to so treat them. We recognize, too, that the nature of the office held by a U.S. commissioner may require appropriate restraints on his other activities. We are of the opinion, however, that some differentiation should be made between full-time officers and part-time officers who perform an essential service for modest compensation. The absence of an appropriate exemption of part-time commissioners could prompt the resignation of many of the lawyers now in office. The inevitable result would be a mediocre "commissioner system" and the attendant problems in the administration of the criminal law.

We note that under section 205 of the proposed bill a "special Government employee" is subject to the provisions "only in relation to particular matter(s)" therein defined. However, a commissioner is not a "special Government employee" within the narrow definition of section 202(a). We are of the opinion that the proposed bill should include a provision which would exempt the part-time commissioners from its comprehensive coverage. There are areas of Federal legal practice in which a part-time commissioner is not confronted by any conflict-of-interest problem. These areas should not be foreclosed to him. We are of the opinion that a comparable exemption applicable to part-time commissioners, and consistent with the duties of the office, could be included in the proposed legislation without adversely affecting its salutary purposes.

The Judicial Conference of the United States has directed the Committee on the Administration of Criminal Law, of which I am Chairman, to study the operations of the "commissioner system." This study will require some consideration of the conflict-of-interests problems faced by part-time commissioners. We believe that it is possible to devise a realistic and workable code of ethics adequate to protect against unseemly conflicts.

Respectfully submitted.

WILLIAM F. SMITH,
*Chairman, Committee on the Administration of Criminal Law,
Judicial Conference of the United States.*

U.S. commissioners—Gross fees paid, calendar year 1961

Part time :	Number
\$14 to \$1,000-----	372
\$1,001 to \$2,000-----	86
\$2,001 to \$3,000-----	40
\$3,001 to \$4,000-----	19
\$4,001 to \$5,000-----	15
\$5,001 to \$6,000-----	4
\$6,001 to \$7,000-----	4
\$7,001 to \$8,000-----	2
\$8,001 to \$9,000-----	3
\$9,001 to \$10,000-----	4
\$10,001 to \$10,500-----	12
Total-----	¹ 561

Full time :	Number
\$8,001 to \$9,000-----	1
\$10,500-----	5
Total-----	6

¹ 126 U.S. commissioners did not request the payment of any fees during calendar 1961, and presumably rendered little or no service.

(Whereupon, at 3:37 p.m., the subcommittee recessed, subject to the call of the Chair.)



LEGISLATIVE HISTORY

Public Law 87-849

H. R. 8140

July 16, 1962. (From collection of Robert H. Whittaker, 1962.)

5000, 20, 1000. Source location reported 8.5 km from the shore
mouth of the Sonora Bay. (11/1/00) (11/1/00)

TABLE OF CONTENTS

1982. *U.S. DMC: Federal Judicial R. P. 1102* 14 pp.

Index and summary of H. R. 8140	.1
Digest of Public Law 87-849	.2

LEGISLATIVE HISTORY

H. R. 8110
Public Law 87-343

TABLE OF CONTENTS

1.	Index and Summary of H. R. 8110
2.	Text of Public Law 87-343

INDEX AND SUMMARY OF H. R. 8140

July	13, 1961	Rep. Celler introduced H. R. 8140 which was referred to the House Judiciary Committee. Print of bill as introduced.
July	18, 1961	House committee voted to report H. R. 8140.
July	20, 1961	House committee reported H. R. 8140 with amendments. H. Report No. 748. Print of bill and report.
Aug.	7, 1961	House passed H. R. 8140 as reported.
Aug.	8, 1961	H. R. 8140 was referred to the Senate Judiciary Committee. Print of bill as referred.
June	21, 1962	Sen. Keating submitted proposed amendments to H. R. 8140.
Sept.	29, 1962	Senate committee reported H. R. 8140 with amendments. S. Report No. 2213. Print of bill and report.
Oct.	2, 1962	Senate passed over H. R. 8140.
Oct.	3, 1962	Senate passed H. R. 8140 as reported.
Oct.	4, 1962	House agreed to Senate amendments to H. R. 8140.
Oct.	23, 1962	Approved: Public Law 87-849.

INDEX AND SUMMARY OF H. R. 8110

Oct.	23, 1962	Approved: Public Law 87-819.
Oct.	4, 1962	House agreed to Senate amendments to H. R. 8110.
Oct.	3, 1962	Senate passed H. R. 8110 as reported.
Oct.	2, 1962	Senate passed over H. R. 8110.
Sept.	29, 1962	Senate committee reported H. R. 8110 with amendments. 2. Report No. 2213. Print of bill and report.
June	21, 1962	Sen. Keating submitted proposed amendments to H. R. 8110.
Aug.	8, 1961	H. R. 8110 was referred to the Senate Judiciary Committee. Print of bill as referred.
Aug.	7, 1961	House passed H. R. 8110 as reported.
July	20, 1961	House committee reported H. R. 8110 with amendments. H. Report No. 748. Print of bill and report.
July	18, 1961	House committee voted to report H. R. 8110.
July	13, 1961	Rep. Geller introduced H. R. 8110 which was referred to the House Judiciary Committee. Print of bill as introduced.

DIGEST OF PUBLIC LAW 87-849

REVISION OF LAWS RELATING TO BRIBERY AND CONFLICTS OF INTEREST
Revises and consolidates criminal statutes dealing with bribery and conflicts of interest and makes appropriate exemptions from the bribery statutes for consultants and temporary employees. Includes provisions as follows: Authorizes a Federal employee to represent another, without compensation, in a disciplinary, loyalty, or other personnel administration proceeding. Provides that a former Federal employee shall be permanently barred from acting as attorney or agent for anyone other than the U.S. in any matter in which the U.S. is a party or is interested and in which he participated personally and substantially in a governmental capacity. Prohibits a partner of a person employed by the Government from acting as agent or attorney for anyone other than the U.S. in matters in which the employee participates or has participated personally and substantially for the Government. Authorizes the President or a department or agency head to declare void and rescind any transaction with the U.S. in relation to which there has been a final conviction under the bribery or conflicts of interest statutes, and authorizes reasonable recovery by the U.S. in such cases.

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CONFLICTS OF INTEREST

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HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

EIGHTY-SEVENTH CONGRESS

SECOND SESSION

ON

H.R. 8140

TO STRENGTHEN THE CRIMINAL LAWS RELATING TO
BRIBERY, GRAFT, AND CONFLICTS OF INTEREST, AND
FOR OTHER PURPOSES

JUNE 21, 1962

Printed for the use of the Committee on the Judiciary

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WASHINGTON : 1962

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CONTENTS

Statement of—

Berger, Raoul, chairman, Section of Administrative Law, American Bar Association-----	Page 52
Houser, Adm. Harold A. (retired), legislative counsel, Retired Officers Association, Washington, D.C.-----	56
Javits, Hon. Jacob K., a U.S. Senator from the State of New York--	74
Katzenbach, Nicholas deB., Deputy Attorney General of the United States, accompanied by Sol Lindenbaum and David Stephenson, Office of Legal Counsel, Department of Justice, Washington, D.C.--	16
Keating, Hon. Kenneth B., a U.S. Senator from the State of New York-----	8
Lindsay, Hon. John V., a Representative in Congress from the 17th Congressional District of the State of New York-----	35
Perkins, Roswell B., chairman, special committee on the Federal conflict of interest laws, Association of the Bar of the City of New York, accompanied by Charles A. Horsky, attorney at law, Washington, D.C., and Alexander C. Hoagland, Jr., attorney at law, New York, N.Y.-----	42
Taussig, Capt. Joseph K., U.S. Navy (retired), Washington, D.C.---	70
Willenbacher, Capt. Franz O., U.S. Navy (retired), National Counsel of the Commissioned Officers Association, Public Health Service and the Association of Commissioned Officers, Coast and Geodetic Survey-----	60
Statement submitted by Reserve Officers Association of the United States, Washington, D.C.-----	94

EXHIBITS

Copy of the bill H.R. 8140-----	1
Four amendments to the bill H.R. 8140 as proposed by Mr. Keating for himself and Mr. Javits-----	10
Letter dated July 23, 1962, addressed to Hon. James O. Eastland from Nicholas deB. Katzenbach, Deputy Attorney General of the United States-----	24
Number of U.S. Commissioners serving, a compilation prepared by the Administrative Office of the U.S. Courts and submitted by Senator Roman L. Hruska-----	31
Copy of the bill S. 603-----	78
Copy of the bill S. 637-----	91
Letter dated June 21, 1962, addressed to Hon. James O. Eastland from Wilbur J. Cohen, Assistant Secretary, Department of Health, Education, and Welfare, Washington, D.C.-----	92
Letter dated June 23, 1962, addressed to Hon. James O. Eastland from Hon. Henry M. Jackson, with attachments-----	96
Letter dated June 15, 1962, addressed to Hon. James O. Eastland from Judge William F. Smith, U.S. Circuit Court of Appeals for the Third Circuit, and Chairman of the Committee on the Administration of Criminal Law, Judicial Conference of the United States-----	99

CONFLICTS OF INTEREST

THURSDAY, JUNE 21, 1962

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 10:40 a.m., in room 2228, New Senate Office Building, Senator Olin D. Johnston presiding.

Present: Senators Johnston, Wiley, Hruska, Keating, and Ervin.

Also present: Thomas B. Collins, professional staff member.

Senator JOHNSTON. The committee will come to order.

Pursuant to notice contained in the Congressional Record of June 13, 1962, the Committee on the Judiciary today opens hearings on H.R. 8140, a bill to strengthen the criminal laws relating to bribery, graft and conflicts of interest.

H.R. 8140 passed the House of Representatives last August 7, 1961, and is presently pending before this committee. The bill will be made a part of the record at this point.

(H.R. 8140 follows:)

[H.R., 8140, 87th Cong., 1st sess.]

AN ACT To strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) so much of chapter 11 of title 18 of the United States Code as precedes section 214 is amended to read as follows:

"CHAPTER 11—BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

- "Sec.
- "201. Bribery of public officials and witnesses.
- "202. Definitions.
- "203. Compensation of Members of Congress, officers and others, in matters affecting the Government.
- "204. Practice in Court of Claims by Members of Congress.
- "205. Activities of officers and employees in claims against and other matters affecting the Government.
- "206. Exemption of retired officers of the Armed Forces.
- "207. Disqualification of former officers and employees in matters connected with former duties or official responsibilities; disqualification of partners.
- "208. Acts affecting a personal financial interest.
- "209. Salary of Government officials and employees payable only by United States.
- "210. Offer to procure appointive public office.
- "211. Acceptance or solicitation to obtain appointive public office.
- "212. Offer of loan or gratuity to bank examiner.
- "213. Acceptance of loan or gratuity by bank examiner.
- "214. Offer for procurement of Federal Reserve bank loan and discount of commercial paper.
- "215. Receipt of commissions or gifts for procuring loans.
- "216. Receipt or charge of commissions or gifts for farm loan, land bank, or small business transactions.
- "217. Acceptance of consideration for adjustment of farm indebtedness.
- "218. Voiding transactions in violation of chapter; recovery by the United States.

§ 201. Bribery of public officials and witnesses

“(a) For the purpose of this section :

“‘public official’ means Member of Congress, or Resident Commissioner, either before or after he has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror ; and

“‘person who has been selected to be a public official’ means any person who has been nominated or appointed to be a public official, or has been officially informed that he will be so nominated or appointed ; and

“‘official act’ means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in his official capacity, or in his place of trust or profit.

“(b) Whoever, directly or indirectly, corruptly gives, offers or promises anything of value to any public official or person who has been selected to be a public official, or offers or promises any public official or any person who has been selected to be a public official to give anything of value to any other person or entity, with intent—

“(1) to influence any official act ; or

“(2) to influence such public official or person who has been selected to be a public official to commit or aid in committing, or collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States ; or

“(3) to induce such public official or such person who has been selected to be a public official to do or omit to do any act in violation of his lawful duty, or

“(c) Whoever, being a public official or person selected to be a public official, directly or indirectly, corruptly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself or for any other person or entity, in return for :

“(1) being influenced in his performance of any official act ; or

“(2) being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States ; or

“(3) being induced to do or omit to do any act in violation of his official duty ; or

“(d) Whoever, directly or indirectly, corruptly gives, offers, or promises anything of value to any person, or offers or promises such person to give anything of value to any other person or entity, with intent to influence the testimony under oath or affirmation of such first-mentioned person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or with intent to influence such person to absent himself therefrom ; or

“(e) Whoever, directly or indirectly, corruptly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself or for any other person or entity in return for being influenced in his testimony under oath or affirmation as a witness upon any such trial, hearing, or other proceeding, or in return for absenting himself therefrom—

“Shall be fined not more than \$20,000 or three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than fifteen years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.

“(f) Whoever, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly gives, offers, or promises anything of value to any public official, former public official, or person selected to be a public official, for or because of any official act performed or to be performed by such public official, former public official, or person selected to be a public official ; or

“(g) Whoever, being a public official, former public official, or person selected to be a public official, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself for or because of any official act performed or to be performed by him ; or

“(h) Whoever, directly or indirectly, gives, offers, or promises anything of value to any person, for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or for or because of his absence therefrom; or

“(i) Whoever, directly or indirectly, asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself for or because of the testimony under oath or affirmation given or to be given by him as a witness upon any such trial, hearing, or other proceeding, or for or because of his absence therefrom—

“Shall be fined not more than \$10,000 or imprisoned for not more than two years, or both.

“(j) Subsections (d), (e), (h), and (i) shall not be construed to prohibit the payment or receipt of witness fees provided by law, or the payment, by the party upon whose behalf a witness is called and receipt by a witness, of the reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance at any such trial, hearing, or proceeding, or, in the case of expert witnesses, involving a technical or professional opinion, a reasonable fee for time spent in the preparation of such opinion, and in appearing and testifying.

“(k) The offenses and penalties prescribed in this section are separate from and in addition to those prescribed in sections 1503, 1504, and 1505 of this title.”

“§ 202. Definitions

“(a) For the purpose of sections 203, 205, 207, 208, and 209 of this title the term ‘special Government employee’ shall mean an officer or employee of the executive branch of the United States Government, of any independent agency of the United States or of the District of Columbia, who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis. Notwithstanding section 29 (c) and (d) of the Act of August 10, 1956 (70A Stat. 632; 5 U.S.C. 30r (c) and (d)), a Reserve officer of the Armed Forces, or an officer of the National Guard of the United States, unless otherwise an officer or employee of the United States, shall be classified as a special Government employee while on active duty solely for training. A Reserve officer of the Armed Forces or an officer of the National Guard of the United States who is serving a period of extended active duty in excess of one hundred and thirty days shall be classified as an officer of the United States within the meaning of section 203 and sections 205 through 209 and 218. The terms ‘officer or employee’ and ‘special Government employee’ as used in sections 203, 205, 207 through 209, and 218, shall not include enlisted members of the Armed Forces.

“(b) For the purpose of sections 203, 205, and 207 of this title, the term ‘official responsibility’ means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action.

“§ 203. Compensation to Members of Congress, officers, and others in matters affecting the Government

“(a) Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receives or agrees to receive, or asks, demands, solicits, or seeks, any compensation for any services rendered or to be rendered either by himself or another—

“(1) at a time when he is a Member of Congress, Member of Congress Elect, Resident Commissioner, or Resident Commissioner Elect; or

“(2) at a time when he is an officer or employee of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States, including the District of Columbia, in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, court-martial, officer, or any civil, military, or naval commission, or

"(b) Whoever, knowingly, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly gives, promises, or offers any compensation for any such services rendered or to be rendered at a time when the person to whom the compensation is given, promised, or offered, is or was such a Member, Commissioner, officer, or employee—

"Shall be fined not more than \$10,000 or imprisoned for not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States.

"(c) A special Government employee shall be subject to subsection (a) only in relation to a particular matter (1) in which he has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or (2) which is or within two years has been a subject of his official responsibility, or (3) which is pending in the department or agency of the Government in which he is serving: *Provided*, That clause (3) shall not apply in the case of a special Government employee who serves no more than fifteen days during any period of three hundred and sixty-five consecutive days.

"§ 204. Practice in Court of Claims by Members of Congress

"Whoever, being a Member of Congress, Member of Congress Elect, Resident Commissioner, or Resident Commissioner Elect, practices in the Court of Claims, shall be fined not more than \$10,000 or imprisoned for not more than two years, or both, and shall be incapable of holding any office of honor, trust, or profit under the United States.

"§ 205. Activities of officers and employees in claims against and other matters affecting the Government

"Whoever, being an officer or employee of the United States in the executive, legislative, or judicial branch of the Government or in any agency of the United States, including the District of Columbia, otherwise than in the proper discharge of his official duties—

"(1) acts as agent or attorney for prosecuting any claim against the United States, or receives any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim,
or

"(2) acts as agent or attorney for anyone before any department, agency, court, court-martial, officer, or any civil, military, or naval commission in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest—

"Shall be fined not more than \$10,000 or imprisoned for not more than two years, or both.

"A special Government employee shall be subject to the preceding paragraphs only in relation to a particular matter (1) in which he has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or (2) which is or within two years has been a subject of his official responsibility, or (3) which is pending in the department or agency of the Government in which he is serving: *Provided*, That clause (3) shall not apply in the case of a special Government employee who serves no more than fifteen days during any period of three hundred and sixty-five consecutive days.

"Nothing herein prevents an officer or employee from taking uncompensated action, not inconsistent with the faithful performance of his duties, to aid or assist any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings with respect to those proceedings.

"Nothing herein or in section 203 prevents an officer or employee, including a special Government employee, from acting, with or without compensation, as agent or attorney for or otherwise aiding or assisting his parents, spouse, child, or any person for whom he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except in those matters in which he has participated personally and substantially as a Government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which are the subject of his official responsibility, provided that the Government official responsible for appointment to his position approves.

"Nothing herein or in section 203 or 207 prevents a present or former special Government employee from aiding or assisting another person in the performance of work under a contract with or for the benefit of the United States provided that the head of such special Government employee's department or agency shall certify in writing that the national interest requires such aid or assistance.

"Such certification shall be published in the Federal Register.

"Nothing herein prevents an officer or employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

"§ 206. Exemption of retired officers of the Armed Forces

"Sections 203 and 205 of this title shall not apply to a retired officer of the Armed Forces of the United States while not on active duty and not otherwise an officer or employee of the United States, or to any person specially excepted by Act of Congress.

"§ 207. Disqualification of former officers and employees in matters connected with former duties or official responsibilities; disqualification of partners

"(a) Whoever, having been an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, after his employment has ceased, knowingly acts as agent or attorney for anyone other than the United States in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claims, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest and in which he participated personally and substantially as an officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, while so employed, or

"(b) Whoever, having been so employed, within two years after his last employment has ceased, appears personally before any court or department or agency of the Government as agent, or attorney for, anyone other than the United States in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or directly and substantially interested, and which was under his official responsibility as an officer or employee of the Government at any time within a period of two years prior to the termination of his employment—

"Shall be fined not more than \$10,000 or imprisoned for not more than two years, or both.

"(c) Whoever, being a partner of a former officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a former special Government employee, engages, during a period of two years following the termination of the latter's employment by the Government, in any activities which such former officer or employee of the Government or special Government employee is himself prohibited from engaging in by subsection (a) hereof; or

"(d) Whoever, being a partner of an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, acts as agent or attorney for anyone other than the United States, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest and in which such officer or employee of the Government or special Government employee participates or has participated personally and substantially as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or which is the subject of his official responsibility—

"Shall be fined not more than \$5,000, or imprisoned not more than one year, or both.

"A partner of a present or former officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia or of a present or former special Govern-

ment employee shall as such be subject to the provisions of sections 203, 205, and 207 of this title only as expressly provided in subsections (c) and (d) of this section.

“§ 208. Acts affecting a personal financial interest

“(a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a Government action, proceeding, or other particular matter in which, to his knowledge, he, his spouse, child, partner, business organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest,

“Shall be fined not more than \$10,000, or imprisoned not more than two years, or both.

“(b) Subsection (a) hereof shall not apply (1) if the officer or employee first advises the Government official responsible for appointment to his position of the nature and circumstances of the action, proceeding, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee, or (2) if, by general rule or regulation published in the Federal Register, the financial interest has been exempted from the requirements of clause (1) hereof as being too remote or too inconsequential to affect the integrity of Government officers’ or employees’ services.

“§ 209. Salary of Government officials and employees payable only by United States

“(a) Whoever receives any salary, or any contribution to or supplementation of salary, as compensation for his services as an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality ; or

“Whoever, whether an individual, partnership, association, corporation, or other organization pays, or makes any contribution to, or in any way supplements the salary of, any such officer or employee under circumstances which would make its receipt a violation of this subsection—

“Shall be fined not more than \$5,000 or imprisoned not more than one year, or both.

“(b) Nothing herein prevents an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States, or of the District of Columbia, from continuing to participate in a bona fide pension, retirement, group life, health or accident insurance, profit-sharing, stock bonus, or other employee welfare or benefit plan maintained by a former employer.

“(c) This section does not apply to a special Government employee or to an officer or employee of the Government serving without compensation, whether or not he is a special Government employee, or to any person paying, contributing to, or supplementing his salary as such.”

“(d) This section does not prohibit payment or acceptance of contributions, awards, or other expenses under the terms of the Government Employees Training Act (Public Law 85-507, 72 Stat. 327; 5 U.S.C. 2301-2319, July 7, 1958).”

(b) Sections 214 and 215 of chapter 11 of title 18 of the United States Code are respectively redesignated sections 210 and 211 ;

(c) Sections 216 and 223 of chapter 11 of title 18 of the United States Code are repealed ;

(d) Sections 217, 218, 219, 220, 221, and 222 of chapter 11 of title 18 of the United States Code are respectively redesignated sections 212, 213, 214, 215, 216, and 217 ;

(e) Chapter 11 of title 18 of the United States Code is further amended by adding at the end thereof the following new section:

"§ 218. Voiding transactions in violation of chapter; recovery by the United States

"In addition to any other remedies provided by law the President or, under regulations prescribed by him, the head of any department or agency involved, may declare void and rescind any contract, loan, grant, subsidy, license, right, permit, franchise, use, authority, privilege, benefit, certificate, ruling, decision, opinion, or rate schedule awarded, granted, paid, furnished, or published, or the performance of any service or transfer or delivery of any thing to, by or for any agency of the United States or officer or employee of the United States or person acting on behalf thereof, in relation to which there has been a final conviction for any violation of this chapter, and the United States shall be entitled to recover in addition to any penalty prescribed by law or in a contract the amount expended or the thing transferred or delivered on its behalf, or the reasonable value thereof."

SEC. 2. Sections 281 and 283 (except as they may apply to retired officers of the armed forces of the United States), 282 and 284 of chapter 15 of title 18, section 434 of chapter 23 of title 18, and section 1914 of chapter 93 of title 18 of the United States Code are repealed and will, respectively, be supplanted by sections 203, 205, 204, 207, 208, and 209 of title 18 of the United States Code as set forth in section 1 of this Act. All exemptions from the provisions of sections 281, 282, 283, 284, 434, or 1914 of title 18 of the United States Code heretofore created or authorized by statute which are in force on the effective date of this Act shall, on and after that date, be deemed to be exemptions from sections 203, 204, 205, 207, 208, or 209, respectively, of title 18 of the United States Code except to the extent that they affect officers or employees of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, as to whom they are no longer applicable.

SEC. 3. Section 190 of the Revised Statutes (5 U.S.C. 99) is repealed.

SEC. 4. This Act shall take effect ninety days after the date of its enactment. Passed the House of Representatives August 7, 1961.

Attest:

RALPH R. ROBERTS, *Clerk.*

Senator JOHNSTON. The bill has the support of the President, and represents the consensus of the principal agencies, both Government and private, which long have been concerned with or have experienced the necessity for corrective legislation in this area.

The President of the United States, on April 27, 1961, sent a special message to the Congress dealing with conflicts of interest and ethics on the part of Government officials. He accompanied this message with proposed legislation, the more important elements of which have been incorporated in H.R. 8140.

The bill presently pending before us is a combination of presidential recommendations, recommendations of the Association of the Bar of the City of New York which spent over 2 years in the study of this matter, and efforts of a House Judiciary Subcommittee under Chairman Celler, all of which are wrapped up in this one bill.

The Attorney General of the United States appeared before the full Committee on the Judiciary in executive session on August 31, 1961, and discussed this proposal in great detail with our committee.

The hearing today has been called by Senator Eastland so as to obtain additional comments from the Department of Justice, the Association of the Bar of the City of New York, the American Bar Association, and other interested persons.

We welcome as our first witness of the morning the Deputy Attorney General of the United States, Nicholas deB. Katzenbach.

Will you please come around, and you may proceed as you see fit.

Pardon me, I believe before you begin Senator Keating has a statement he would like to make at this time.

Senator KEATING. Mr. Chairman, this is a subject in which I have had a deep interest. I have sponsored legislation relating to conflict of interest. Any legislation on this subject at this particular time is bound to bear the impact of the *Billie Sol Estes* case. That, it should be made very clear, is something for another committee to go into. It is our responsibility, however, it seems to me, to devise laws that are adequate to cope with incidents like the *Billie Sol Estes* case. If we succeed in this task we will be making a lasting contribution to good government, one that will have value long after the events of the *Estes* case, or any other case, have faded away.

Existing Federal laws on conflict of interest, and the related problems of bribery, graft and corrupt practices, are outdated, inconsistent, vague and inadequate. Many of the pertinent statutes are a century old and were written for the problems of another era of government.

Congress has been struggling with this subject for many years, but its efforts to date have not been fruitful. We were given a great assist in 1960 by the work and report of a special committee of the Association of the Bar of the City of New York under the leadership of Roswell B. Perkins. The bill before us is similar in many of its provisions to that recommended by the bar committee which I co-sponsored with my colleague Senator Javits, in the Senate. There are several important respects in which the bill before us falls short of what is required to deal with the conflict of interest problem with complete realism and effectiveness. They are four in number.

First, the bill provides no civil or administrative procedure to insure the effective enforcement of the conflict of interest statutes.

Second, the bill omits any reference to ex parte communications relating to matters pending before the Government boards, agencies, and departments.

Third, the bill provides no machinery for resolving the multitude of conflict of interest problems with which Members of Congress are confronted.

Fourth and most important of all in light of cases like the *Billie Sol Estes* case, the bill provides no prohibitions against the acceptance of gifts. I have submitted four amendments to close these loopholes in the House-passed bill. And I ask unanimous consent, at the conclusion of my opening remarks, Mr. Chairman, to insert the text of these four amendments which I am proposing to the bill before us.

Senator JOHNSTON. Hearing no opposition, it shall be made a part of the record.

Senator KEATING. Under the first amendment, heads of departments and agencies, if directed by presidential regulation, would have a degree of administrative control over employees who violate any of the provisions found in H.R. 8140. This would not affect the application of criminal penalties in appropriate cases. There are many conflict of interest situations, however, in which a large gray area exists. The demanding requirements of guilt beyond a reasonable doubt in criminal cases may make it extremely difficult to prevail in criminal proceedings in cases which definitely warrant civil or administrative sanctions.

President Kennedy, in his message to the Congress on April 27, 1961, recognized the need for this dual approach to enforce the conflict of interest laws. In that message he said:

Most of the existing laws are criminal statutes. As such, they have been strictly construed and, because of their harshness, infrequently invoked. By granting this added flexibility we help to insure more effective enforcement. In addition, the regulations which are adopted will permit more specific adaptation of the general prohibitions tailored to the activities of particular agencies.

It is clear from the President's message that he recognized a form of administrative enforcement as an important ingredient for conflict of interest legislation. And I hope very much in our consideration of this bill we will be able to incorporate something along those lines as suggested by the President.

My second proposed amendment also was supported in the President's message which recognized the need for dealing with ex parte communications to Government agencies. In that connection he stated:

Some of the most spectacular examples of official misconduct have involved ex parte communication—undisclosed informal contact between an agency official and a party interested in a matter before that official. Such covert influence on agency action often does basic injury to the fairness of agency proceedings, particularly when those proceedings are judicial in nature.

This amendment is derived from the provisions of S. 637, which I sponsored in the last session of Congress. Under its provisions communications received by Government agencies from Members of Congress, whether written or oral, would be made a part of the public record of the matter to which the communication referred. I feel very strongly that is desirable in the public interest and in the interest of the Members of Congress.

My third amendment also is designed to deal with congressional conflict of interest problems. The people have a right to expect the same high standards of conduct from Members of Congress and employees of the legislative branch as they do from the executive department. My amendment recognizes the special problems of Congress; but it strongly rejects any notion that Members of Congress should be exempt from the high ethical standards which we expect of all members of the Government.

Under this amendment the Joint Congressional Committee on Ethics would be established within the Congress to make a study of conflict-of-interest problems. The Rules Committee of the Senate would be given duties similar to those of the typical grievance or ethics committees of bar associations, medical societies, and other professional organizations. It would consider all matters arising in connection with legislative conflicts of interest and would issue public interpretative opinions for the guidance of Members either on request or on its own initiative. In short, it would provide general guidelines for action as well as effective machinery for resolving specific congressional conflict-of-interest problems. Without such machinery, each Member must act on his own judgment, which, in the light of the pressures on him, may be a very faulty guide to what is right, no matter how good his intentions may be.

My last amendment is directed to an area in our conflict-of-interest laws where there now exists almost a complete void—that is, gifts to Federal employees. News out of Texas and Washington in the last

few weeks might lead one to think that Billie Sol Estes was the Santa Claus of Texas. Under existing law the acceptance of a gift by a Federal employee may not be illegal even though the employee's agency or department does regular business with the donor. This in my opinion is absurd and should be changed.

Under the amendment I suggest gifts to Federal employees would be banned if the employee has reason to believe the donor would not give the gift but for the employee's position. In addition, the bill would bar gifts to Federal employees from donors having business relations with the employee's agency or where the donor conducts operations regulated by the employee's agency. Such obvious attempts at influence peddling or the purchasing of good will should be strictly prohibited.

Popular support for conflict-of-interest legislation is an absolute prerequisite for the effective enforcement of laws on this subject. Apathy, indifference or open hostility to any law generates obstacles which may overwhelm even the best enforcement program. Events in the last few weeks have provided a dramatic setting for the long-needed revisions of our conflict-of-interest legislation. It is my hope that we will profit from this situation by enacting an effective law in this session of Congress.

This is a subject, Mr. Chairman, which has been before us for a long time, all of the time since I have served in the Congress, and I do hope that at this session we can come to grips with it and enact legislation.

Thank you very much.

(The proposed amendments by Senator Keating are as follows:)

[H.R. 8140, 87th Cong., 2d sess.]

AMENDMENT Intended to be proposed by Mr. Keating (for himself and Mr. Javits) to the bill (H.R. 8140) to strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes, viz: On page 21, line 19, insert the following:

§ 401. Preventive measures

The head of an agency may, and shall do so if so provided in regulations issued by the President, require—

(a) individuals entering Government employment with such agency and, periodically, the employees or particular categories of employees of such agency, to sign a statement that they have read an appropriate summary of the rules established by this Act and the regulations issued hereunder;

(b) employees of such agency, or particular categories thereof, to report periodically as to their non-Government employment or self-employment, if any.

§ 402. Remedies; civil penalties; procedure

(a) **ADMINISTRATIVE ENFORCEMENT AS TO CURRENT GOVERNMENT EMPLOYEES.—**

(1) **REMEDIES AND CIVIL PENALTIES:** The head of an agency may dismiss, suspend, or take such other action as may be appropriate in the circumstances in respect of any Government employee of his agency upon finding that such employee has violated this Act or regulations promulgated hereunder. Such action may include the imposition of conditions of the nature described in subsection (b) (1).

(2) **PROCEDURE:** The procedures for any such action shall correspond to those applicable for disciplinary action for employee misconduct generally, and any such action shall be subject to judicial review to the extent provided by law for disciplinary action for misconduct of employees of the same category and grade.

(b) ADMINISTRATIVE ENFORCEMENT AS TO FORMER GOVERNMENT EMPLOYEES AND OTHERS.—

(1) REMEDIES AND CIVIL PENALTIES: The head of an agency, upon finding that any former employee of such agency or any other person has violated any provision of this Act, may, in addition to any other powers the head of such agency may have, bar or impose reasonable conditions upon—

(A) the appearance before such agency of such former employee or other person, and

(B) the conduct of, or negotiation or competition for, business with such agency by such former employee or other person, for such period of time as may reasonably be necessary or appropriate to effectuate the purposes of this Act.

(2) PROCEDURE.—

(A) HEARINGS.—Findings of violations referred to in subsection (b)

(1) shall be made on the record after notice and hearing, conducted in accordance with the provisions governing adjudication in title 5, United States Code, secs. 1005, 1006, 1007, 1008, and 1011 (Administrative Procedure Act). For the purposes of such hearing any agency head, or any officer designated by it, is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which the agency head finds relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States at any designated place of hearing. Witnesses summoned by the agency head to appear shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(B) JUDICIAL REVIEW.—(i) Any party to a proceeding under this subsection (b) aggrieved by an order issued by the agency head pursuant hereto, may obtain a review of such order in the court of appeals of the United States for any circuit wherein said party is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court within sixty days after the order of the agency upon a written petition praying that such order be modified or set aside in whole or in part.

(ii) A copy of such petition shall forthwith be transmitted by the clerk of the court to the agency head involved, and thereupon such agency head shall file with the court the record upon which the order complained of was entered. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part.

(iii) No objection to the order of the agency head shall be considered by the court unless such objection shall have been urged before the agency or there is reasonable ground for failure to do so.

(iv) The findings of the agency head as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material in that there were reasonable grounds for failure to adduce such evidence in the proceedings before the agency, the court may order such additional evidence to be taken before the agency and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper.

(v) The agency head may modify his findings as to the facts by reason of the additional evidence so taken and shall file with the court such modified or new findings which, if supported by substantial evidence, shall be conclusive, and his recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside in whole or in part, any such order of the agency head, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 346 and 347 of title 28. The commencement of proceedings for review under this subsection shall not, unless specifically ordered by the court, operate as a stay of the agency head's order.

(c) **CIVIL REMEDY FOR DAMAGES AGAINST EMPLOYEES AND FORMER EMPLOYEES.**—The Attorney General of the United States may bring a civil action in any district court of the United States against any Government employee or former Government employee who shall, to his economic advantage, have acted in violation of this Act, and in such action may recover on behalf of the United States, in partial reimbursement of the United States for its expenses of administering this Act, damages in an amount equal to three times the amount of such economic advantage.

(d) **PUBLICATION OF CERTAIN FINDINGS AND DECISIONS.**—Whenever the head of any agency, or the President, exercises the authority conferred by subsections (a) or (b), of this section, copies of the findings and decision therein shall be filed with the President and shall be published at least once each year as part of a volume collecting such findings and opinions. Such volumes shall be made available for public inspection and shall also be made available for distribution or sale to interested persons.

(e) **INTERESTS OF NATIONAL SECURITY.**—When any provision of this Act requires publication of information and the President finds that publication of part or all of such information is inconsistent with national security, he may suspend the requirement of such publication to the extent and for such period of time as he shall deem essential for reasons of national security.

(f) **STATUTE OF LIMITATIONS.**—No administrative or other action under subsections (b) or (c) of this section to enforce any provision of this Act shall be commenced after the expiration of six years following the occurrence of the alleged violation.

§ 403. Civil and criminal remedies

Nothing in sections 401 or 402 of this Act shall be construed to authorize or make lawful anything prohibited or made illegal by sections 201, 203, 205, 207, 209, or 301 of this Act nor to exempt any person from the penal provisions thereof.

[H.R. 8140, 87th Cong., 2d sess.]

AMENDMENT Intended to be proposed by Mr. Keating (for himself and Mr. Javits) to the bill (H.R. 8140) to strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes, viz: On page 21, line 19, insert the following:

§ 301. Communications to agency

Whenever any matter is pending before any agency for adjudication, and any communication with respect to the status, disposition, or merits thereof is received by such agency from any Member of Congress, the agency shall make such communication, or a true and correct copy thereof, together with a true and correct copy of any response made thereto by the agency, a part of the public record of such adjudicatory proceeding. The true and correct substance of any oral communication received by any agency from any Member of Congress, and the true and correct substance of any oral response made by any agency to any communication received from any Member of Congress, with respect to the status, disposition, or merits of any such adjudicatory matter, shall be reduced to writing by any member, officer, or employee thereof who receives such communication or responds thereto, and such writing shall be treated as a written communication received by any agency, or a written response made by the agency thereto, as the case may be; and, in addition thereto, a copy thereof shall be sent to the Member of Congress concerned. As used in this subsection—

(1) The term "agency" includes any member, officer, or employee of any agency; and

(2) The term "Member of Congress" includes (A) any Delegate to Congress or Resident Commissioner in Congress, (B) any employee of any Member of Congress, Delegate to Congress, or Resident Commissioner in Congress, and (C) any employee of any joint committee of the Congress or any committee of either House of the Congress.

[H.R. 8140, 87th Cong., 2d sess.]

AMENDMENT Intended to be proposed by Mr. Keating (for himself and Mr. Javits) to the bill (H.R. 8140) to strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes, viz: On page 21, line 19, insert the following:

§ 501. Policy and purpose

(a) One of the most vital concerns of a free and representative government is the maintenance of moral and ethical standards for their representatives which are above cause for reproach and warrant the confidence of the people. The people are entitled to expect from their elected representatives in the Federal Government and the employees of the legislative branch a standard above that of the marketplace, for these public servants are entrusted with the welfare of the Nation. Yet these standards must be practical and should be fairly representative of the people who elect their representatives. Some conflicts of interest are clearly wrong and should be proscribed by sanctions in the criminal law; however, many are composed of such diverse circumstances, events, and intangible and indirect concerns that only the individual conscience can serve as a practical guide. But there are many possibilities of conflict in that shadowland of conduct for which guidance would be useful and healthy, but for which the criminal law is neither suited nor suitable. Therefore, the Congress finds that a Code of Ethics is desirable for the guidance and protection of its Members and the officers and employees of the legislative branch of Government, establishing the standards of conduct reasonably to be expected of them.

(b) It is also the purpose of this resolution to provide for a thorough study and investigation to determine necessary and desirable changes in existing conflicts of interest statutes applying to Members of Congress and to officers and employees of the legislative branch, and to develop a comprehensive Code of Ethics for the guidance of such Members, officers, and employees, by which the purposes of this resolution may be more fully assured in the conduct of the public business in the legislative branch.

§ 502. Establishment of Joint Committee on Ethics

(a) There is hereby established a joint congressional committee to be known as the Joint Committee on Ethics (hereinafter referred to as the joint committee).

(b) The joint committee shall be composed of seven Members of the Senate, appointed by the President of the Senate, and seven Members of the House of Representatives, appointed by the Speaker of the House of Representatives.

§ 503. Powers and duties

(a) It shall be the duty of the joint committee to undertake a thorough study and investigation of the ways and means by which the policy objectives set forth in section 1 of this resolution can further be assured. In the conduct of such study and investigation the joint committee shall, among other things, determine to what extent existing conflict-of-interest laws or regulations applicable to the legislative branch should be strengthened and it shall recommend a comprehensive Code of Ethics in the formulation of which it shall have considered the following subjects:

(1) Outside employment or professional or business activity by Members of Congress or officers or employees of the legislative branch;

(2) Disclosure by Members of Congress or officers or employees of the legislative branch of confidential information acquired in the course of official duties or the use thereof for personal advantage;

(3) Use of their official position by Members of Congress or officers or employees of the legislative branch to secure unwarranted privileges or exemptions for themselves or others;

(4) Dealing by Members of Congress or officers or employees of the legislative branch in their official capacities with matters in which they have a substantial pecuniary interest;

(5) Conduct by Members of Congress or officers or employees of the legislative branch which gives reasonable cause for public suspicion of violation of public trust; and

(6) Other matters concerning official propriety and the integrity of the public service as it relates to Members of Congress, officers or employees of the legislative branch.

(b) The joint committee shall report to the Senate and the House of Representatives the result of its investigations together with such recommendations for the establishment of a Code of Ethics covering the legislative branch as it may deem advisable. Such report shall be submitted no later than June 30, 1963, and the committee shall cease to exist thirty days after the submission of its final report.

(c) Vacancies in the membership of the joint committee shall not affect the power of the remaining members to execute the functions of the joint committee, and shall be filled in the same manner as in the case of the original selection. The joint committee shall select a chairman and a vice chairman from among its members.

§ 504. Hearings, subpoenas, disbursements, employees

(a) The joint committee, or any subcommittee thereof, shall have power to hold hearings and to sit and act at such places and times, to require by subpoena or otherwise the attendance of such witnesses and the production of such books, papers, and documents, to administer such oaths, to take such testimony, and to make such expenditures, as it deems advisable. Subpoenas shall be issued under the signature of the chairman of said joint committee, and shall be served by any person designated by him. Amounts appropriated for the expenses of the joint committee shall be disbursed one-half by the Secretary of the Senate and one-half by the Clerk of the House.

(b) The joint committee shall have the power to employ and fix the compensation of such experts, consultants, and clerical and stenographic assistants, to procure such printing and binding, and to make such expenditures, as it deems necessary and advisable, subject to the limitations of its appropriations. The joint committee is authorized to utilize the services, information, and facilities of such departments and other agencies of the Government as it may deem appropriate.

§ 505. Limitation of joint committee's powers

The joint committee shall have no power of enforcement with respect to any Members of Congress or officer or employee of the legislative branch, and such power is reserved with respect to its Members, officers, or employees to each House or to any committee thereof which has been designated to carry out such functions.

§ 506. Interim code of ethics

For the purposes of guidance for Members of Congress and officers and employees of the legislative branch during the period during which the joint committee is considering the provisions of an appropriate Code of Ethics for Members of Congress and officers or employees of the legislative branch, the Congress hereby adopts the following standards as a guide to such Members, officers, or employees:

(a) No Member of Congress, or officer or employee of the legislative branch, should have any interest, financial or otherwise, direct or indirect or engage in any business, transaction, or professional activity or incur any obligation of any nature whether financial or moral, which is in substantial conflict with the proper discharge of his duties in the public interest; nor should any Member of Congress, officer or employee of the legislative branch give substantial and reasonable cause to the public to believe that he is acting in breach of his public trust.

(b) In addition to the general rule set forth in paragraph (a), the following standards are applied to certain specified transactions:

(1) No Member of Congress, or officer or employee of the legislative branch of the Government should accept other employment which will tend to impair his independence of judgment in the exercise of his official duties.

(2) No Member of Congress, or officer or employee of the legislative branch of the Government should accept employment or engage in any business or professional activity which will tend to involve his disclosure or use of confidential information which he has gained by reason of his official position or authority.

(3) No Member of Congress, or officer or employee of the legislative branch of the Government, should disclose confidential information acquired by him in the course of his official duties or use such information for other than official purposes.

(4) No Member of Congress, or officer or employee of the legislative branch of the Government, should use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.

(5) A Member of Congress, or officer or employee of the legislative branch of the Government should not by his conduct give reasonable cause for belief that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position, or influence of any person or political party.

(6) A Member of Congress, or officer or employee of the legislative branch of the Government should endeavor to pursue a course of conduct which will not give reasonable cause for belief that he is likely to violate his trust.

(7) Any Member of Congress, or officer or employee of the legislative branch of the Government, having a financial interest, direct or indirect, having a value of \$10,000 or more, in any activity which is subject to the jurisdiction of a regulatory agency, should file with the Comptroller General a statement setting forth the nature of such interest in such reasonable detail, and in accordance with such regulations as shall be prescribed by the Comptroller General. As used herein, the term "regulatory agency" shall include such agencies as shall be designated by the Comptroller General, which list shall be published in the Federal Register as soon as practicable.

§ 507.

Paragraph (c) of subsection 1 of rule XXV of the Standing Rules of the Senate is hereby amended by adding at the end thereof a new subparagraph to be subparagraph (3) to read as follows:

"(3) Such committee shall also have the duty to consider all matters arising in connection with the application of any code of ethics applicable to Members, officers, or employees of the Senate. The committee shall receive complaints of any violation of such code and may, upon request of any Senator, officer, or employee, give an advisory opinion to the Senator, officer, or employee involved on the conformity of any proposed conduct with any such code."

[H.R. 8140, 87th Cong., 2d sess.]

AMENDMENT Intended to be proposed by Mr. Keating (for himself and Mr. Javits) to the bill (H.R. 8140) to strengthen the criminal laws relating to bribery, graft, and conflict of interest, and for other purposes, viz: On page 21, line 19, insert the following:

§ 301. Gifts

(a) GENERAL RULE FOR ALL EMPLOYEES.—No Government employee shall receive, accept, take, seek, or solicit, directly or indirectly, any thing of economic value as a gift gratuity, or favor from any person if such Government employee has reason to believe the donor would not give the gift, gratuity, or favor but for such employees' office or position within the Government.

(b) ADDITIONAL GENERAL RULE FOR REGULAR EMPLOYEE.—No regular Government employee shall receive, accept, take, seek, or solicit, directly or indirectly, any thing of economic value as a gift, gratuity, or favor from any person, or from any officer or director of such person, if such regular Government employee has reason to believe such person—

(1) has or is seeking to obtain contractual or other business or financial relationships with such employee's agency; or

(2) conducts operations or activities which are regulated by such employee's agency; or

(3) has interests which may be substantially affected by such employee's performance or nonperformance of official duty.

Senator JOHNSTON. Senator Wiley, do you wish to make a statement?

Senator WILEY. I have no statement at this time.

Senator JOHNSTON. We will proceed then with Mr. Katzenbach.

You may proceed just as you see fit.

You might identify those with you at the head table so we will know who they are for the record.

STATEMENT OF NICHOLAS deB. KATZENBACH, DEPUTY ATTORNEY GENERAL, ACCOMPANIED BY SOL LINDENBAUM AND DAVID C. STEPHENSON, ATTORNEYS, OFFICE OF LEGAL COUNSEL, DEPARTMENT OF JUSTICE

Mr. KATZENBACH. Thank you, Mr. Chairman.

I have here on my right Mr. Sol Lindenbaum, and on my left Mr. David Stephenson, both from the Office of Legal Counsel. Both of these gentlemen participated in the drafting of the bill submitted and have been following this, and I asked them to be with me today.

Senator JOHNSTON. We are glad to have you and those with you this morning.

Mr. KATZENBACH. I have a prepared statement here, Mr. Chairman, which, with your permission, I think I would like to read. It is somewhat long and I think it will take me about 20 minutes, but I think it gives a good description of the bill.

Senator JOHNSTON. Proceed. Would you rather read it first without any interruptions and then have questions afterward, if anyone has any questions?

You may proceed any way you wish.

Mr. KATZENBACH. I certainly have no objection to any questions anyone may wish to ask at any time.

Senator JOHNSTON. Proceed.

Mr. KATZENBACH. I very much appreciate the opportunity to appear before you today to testify on behalf of the administration with regard to H.R. 8140.

This bill deals with two subjects: conflicts of interest and bribery, both of which are treated in the Criminal Code of the United States. The main purpose of the bill is to revise the current penal statutes dealing with conflicts of interest, and I will discuss that aspect of the pending legislation first.

A substantial part of the impetus for the enactment of this bill derives from the special message which the President transmitted to the Congress on April 27, 1961, dealing with conflicts of interest and ethical behavior on the part of officers and employees of the Government. The President transmitted at the same time a draft of a comprehensive bill to accomplish the legislative recommendations of the message. The most important elements of the draft bill are incorporated in the bill before you, which was passed by the House of Representatives last August with virtually no opposition.

The President's interest and actions in relation to conflicts-of-interest problems and standards of ethical behavior form a background to H.R. 8140 which it will be useful to present. In the first days of his administration he appointed an Advisory Panel on Ethics and Conflict of Interest in Government and asked it to give special attention to the adequacy of the conflict-of-interest laws currently in force. The Panel submitted a report making recommendations for the revisions of these laws which the President followed in large part in the proposed legislation accompanying his special message to Congress.

I might add that Panel was under the chairmanship of retired Judge Calvert Magruder, and included two other members, Prof. Bayless Manning of the Yale Law School and Prof. Jefferson Fordham of the University of Pennsylvania Law School.

The administration's bill reflected as well, the studies and recommendations made through the years by various congressional committees, executive agencies, and members of the bar. It is noteworthy that all of these groups, while approving the underlying principles of the existing statutes, had arrived at the conclusion that they are in need of clarification and in certain aspects are outmoded.

In accordance with a statement he had made in his special message, the President, on May 5, 1961, issued Executive Order 10939 prescribing rules of ethical conduct applicable to heads and assistant heads of departments and agencies and members of the White House staff. The order also directed the head of each department or agency to set similar standards of conduct for the personnel in his organization, and the White House thereafter acted to coordinate the review and revision of agency regulations for this purpose.

Late in 1961 it became apparent that the uncertainties of the conflict-of-interest laws as applied to intermittent consultants and advisers and members of part-time advisory boards were causing widespread apprehension among individuals serving the Government in these capacities. It appeared also that these uncertainties had resulted in considerable diversity of regulations and practice among the agencies. In the interest of arriving at more uniform standards by executive regulation, the President obtained from the Attorney General an opinion, dated January 31, 1962, setting forth guidelines for such standards under present law. On February 9, 1962, the President issued a memorandum to the departments and agencies prescribing detailed regulations and administrative practices designed to prevent conflicts of interest on the part of advisers and consultants.

Finally, on February 26, 1962, the President issued Executive Order 11007 prescribing regulations for the formation and use of advisory committees. This order also reflects a desire for uniform standards and, moreover, reflects a determination that advisory committees shall function at all times in consonance with the conflict-of-interest laws and, I might add, the antitrust laws.

This concern and action on the part of the President which I have summarized, testify, far more effectively than I can testify here today, to the continuous importance of the subject with which H.R. 8140 deals, and in part they reflect the need for the revision of law which the bill would accomplish.

Before passing on to the specific provisions of H.R. 8140, I believe it will be helpful to point out that one of the greatest problems arising from the conflict-of-interest laws is concerned with a matter I have already mentioned—the Government's utilization of private persons as temporary or intermittent consultants and advisers. It must be understood that most of these laws were enacted in the 19th century—that is, at a time when persons outside the Government rarely served it in any way. The laws were therefore directed at activities of regular Government employees, and their present impact on the intermittently needed employee, one who obtains his livelihood outside the Government, is unduly severe. This impact constitutes a serious deterrent to the Government's making use of the skill, talent, and experience of leaders in the sciences, business, and the professions. It can scarcely be questioned that a satisfactory means must be found of overcoming this deterrent without relaxing **basic ethical standards** or permitting actual conflicts of interest.

Congress has from time to time taken cognizance of the needs of an agency in this connection and met them by an ad hoc statutory exemption covering some or all of its consultants and advisers. The patchwork of these exemptions attests to the necessity for standards for these individuals which are more liberal than those for ordinary employees, but the patchwork is no recommendation for the continuation of ad hoc action. In the first place, these exemptions cannot always be obtained or obtained when needed. Furthermore, those that are granted are often inadequate, inconsistent with statutory exemptions granted elsewhere in similar circumstances, or open to abuse. The enactment of general legislation is unquestionably to be preferred and will remove the necessity for specific exemptions.

H.R. 8140 is designed to meet difficulties occasioned by existing law and the administration believes it goes a long way in that direction. However, I do not mean to say that the bill needs no changes, for I wish to recommend a number of amendments which the administration thinks proper. Most are of a minor nature, but a few are of significance. These latter recommendations stem from the careful assessment and study of the bill made by the major scientific agencies of the Government after passage by the House of Representatives. During the period the bill was before the House, neither the magnitude of the conflict-of-interest problems arising from the Government's use of scientific and technical consultants and advisers nor the magnitude of the problem of recruitment were, perhaps, fully appreciated. Indeed, it was the subsequent realization of the gravity of these problems that led, several months later, to the President's issuance of his memorandum to the departments and agencies of the Government setting out uniform regulations under present law intended to prevent conflicts of interest on the part of advisers and consultants. But difficulties remain and that of recruitment unceasingly causes a great deal of concern to the agencies of the Government and particularly those which must employ scientists and other professional personnel. It is this concern which has produced the most important of the recommendations for amendment to H.R. 8140 which I shall submit.

I believe it will be best to proceed from here by describing the main provisions of the bill relating to conflicts of interest and presenting, as I go along, any substantive amendments to those provisions which the administration proposes.

Perhaps the most significant contribution made by H.R. 8140 is the creation in section 202 of a new category of "special Government employees," as distinguished from regular, full-time employees. This new category is created to resolve the problems arising from the need for and use of advisers and consultants and is composed of those persons employed by the Government agencies to serve temporarily or intermittently no more than a total of 130 days in any period of 365 days. As will be seen, the restraints imposed by the bill on these persons in respect to their activities in private capacities are for the most part not as stringent as those brought to bear on similar activities of regular employees.

It may be noted at this point that the bill applies generally to officers of the Armed Forces on active duty but treats a Reserve or National Guard officer as a special Government employee unless he is

serving a period of extended active duty in excess of 130 days. However, the bill makes no distinction between Reserve and National Guard officers involuntarily called to duty for a period of more than 130 days and those serving in excess of 130 days voluntarily. During the preliminary consideration of H.R. 8140 by this committee at the end of last August, Senator Ervin and Senator Hruska, having in mind the orders to active duty for 1 year then being issued, objected to making the recalled officers subject to the full extent of the restrictions imposed on regular Government employees. The administration concurs in this position and deems it desirable to classify Reserve and National Guard officers as special Government employees during all periods of involuntary service, regardless of length. An amendment of the bill for this purpose is set forth and marked No. 1 in the appendix attached to this statement.

Present law (18 U.S.C. 281) prohibits Members of Congress and officers or employees of the Government from receiving compensation for services rendered for others before a Federal department or agency in a matter in which the Government is a party or is interested. Section 203 of the bill continues this prohibition in full effect except as applied to a special Government employee. The latter would be subject to it only with respect to services rendered (1) in a matter in which he has participated as a Government employee personally and substantially, (2) in a matter which within 2 years has been a subject of his official responsibility, or (3) in a matter pending in the agency he serves. However, the third restriction would not be applicable if the special Government employee serves 15 days or less during a period of a year.

The scientific agencies of the Government are uniformly of the view that the second and third restrictions which are placed on a special Government employee by section 203 are unnecessary. In general these agencies take the position that the interests of the Government are adequately guarded by the first restriction—that is, the ban on the appearance of a special Government employee before any agency, in a private representative capacity, in those matters in which he has engaged personally. They note in particular that the other restrictions are aimed not at true conflicts of interest but at the use of any influence or inside information a special Government employee may obtain in his agency, and they believe they can deal with this matter more effectively through administrative regulation. In addition, these agencies point out that the knowledge, experience and skills which an agency may require on an intermittent or temporary basis are often to be found only among individuals whose principal employment necessarily brings them to the same agency on other occasions in behalf of private businesses or other nongovernmental organizations. The agencies fear that section 203 as presently drafted will in many cases prevent or completely discourage these individuals from accepting Government consultancies and in other cases unduly hamper the consultancies they accept.

The administration believes that these arguments and fears are in general well grounded but it recognizes that the influence factor should not be completely ignored. Accordingly, it has determined to recommend the omission of the second limitation described above, that is, the limitation imposing a bar in respect of matters which within

2 years have been subject to a special Government employee's official responsibility, but to recommend, with an amendment, the retention of the third limitation, which affects appearances before the employing agency. The proposed amendment would change from 15 days to 60 days the maximum amount of service to the agency which a special Government employee may perform during a period of a year without bringing the third limitation into play. I believe that this amendment, which appears as No. 2 in the attached appendix, draws a satisfactory line at which to invoke an "antiinfluence" prohibition and at the same time will permit the recruitment of a great majority of the intermittent consultants and advisers the Government needs. I wish to emphasize that there will necessarily have to be close administrative regulation of this provision. The rule now imposed by the President that intermittent consultants and advisers furnish their employing agencies with statements of their financial interests will be maintained. As is true now, an annual examination of the role and need for each such individual in the agency will be required. And, in general, there will be Executive insistence on constant agency scrutiny of the appearances of these individuals on behalf of non-Government enterprises and organizations.

The next section of the bill, section 204, is taken without change from an existing statute which prohibits Members of Congress from practice in the Court of Claims.

Section 205 stems from an existing statute (18 U.S.C. 283) which applies to employees of the departments, agencies, Senate and House of Representatives and prohibits them from acting, with or without compensation, as agent or attorney for prosecuting a claim against the United States otherwise than in the discharge of official duties. The phrase "claim against the United States" has been judicially construed to include only a claim for money or property, with the result that a great variety of proceedings before the agencies and the courts fall outside the prohibition of this statute. Section 205 of the bill remedies this result by extending the prohibition against a Government employee's acting as agent or attorney for another to the entire range of matters in which the United States is a party or has an interest.

This section of the bill provides for the same limited impact on a special Government employee as does section 203. In other words, it prevents him from acting as attorney or agent only in matters in which he has participated personally and substantially, in matters which, within 2 years, have been the subject of his official responsibility, and, if he serves in excess of 15 days in any period of a year, in matters pending before his agency. The same criticism of the last two of these provisions has been voiced as I described earlier in connection with the parallel provisions of section 203. The administration recommends the same amendment here as in that section (No. 2 in the appendix).

Section 206 provides that sections 203 and 205 do not apply to retired officers of the Armed Forces. The combined effect of this section and of the exception at page 20, lines 22-24, of the bill is to leave the present status of retired officers unchanged.

There are presently two statutes concerned with conflicts of interest which apply to persons who leave Government service. 18 U.S.C.

284 prohibits a former Government employee, for a period of 2 years after his employment has ceased, from prosecuting a claim against the United States involving any subject matter with which he was directly connected; 5 U.S.C. 99, which contains no criminal penalties, prohibits a former employee of an executive department, for a similar period of 2 years, from prosecuting any claim pending in any department during his incumbency.

Section 207 of the bill replaces these two statutes. Subsection (a) provides for a permanent bar against a former Government employee acting as agent or attorney in any matter in which the United States is a party or is interested and in which he had participated personally and substantially while in the Government. This lifetime bar, which applies equally to special and regular Government employees, is clearly justified in the matters to which it pertains, since there is simply no reason to permit "switching sides" against the Government in those matters after 2 years or 20 years or at any other time. I should mention also that section 207(a) is concerned not only with claims for money or property, to which the present laws have been limited by judicial decision, but covers the same wide range of proceedings I noted in my discussion of section 205.

Section 207(b) imposes a new 2-year prohibition affecting a former Government employee, whether regular or special. The prohibition would bar him for that period from appearing before a Government agency as agent or attorney for another in connection with a matter which was under his official responsibility at any time within 2 years prior to his leaving the Government. The bar would apply, thus, in cases where he had not actually participated in a matter. As pointed out in the discussion of the applicability of section 203 to special Government employees, a provision of this nature is essentially concerned with preventing the use of influence rather than preventing conflicts of interest. The scientific agencies and others believe that the enactment of this provision will certainly and adversely affect their recruitment of topflight personnel for regular service, particularly in the higher ranking supervisory positions, and their recruitment of intermittent personnel for work in broad areas of agency endeavor. They urge the elimination of the provision.

The administration is in accord with the view of these agencies and believes that the lifetime prohibition in section 207(a), together with strict administrative regulation, will afford the Government ample insurance against unscrupulous conduct on the part of former employees. The administration therefore recommends the omission of section 207(b).

Section 207(c), which is aimed primarily at lawyers, would preclude a partner of a former Government employee for 2 years from handling any matter before the Government in which the former employee is permanently barred by section 207(a). The basis for this prohibition, which has no counterpart in the statutes presently on the books, is the imputation of one partner's disability to another. However, section 207(c) seems to go too far and in some cases might make it difficult for an individual with specialized experience to leave the Government and enter into private activity in his field. As far as former Government lawyers in particular are concerned, the ban against venal conduct imposed by canon 36 of the canons of ethics would seem to afford sufficient protection to the Government. The

administration recommends the omission of section 207(c) and the enactment of the minor conforming amendments marked No. 3 in the appendix.

Section 207(d) prevents an individual who has a partner in Government service from engaging in matters which are or have been handled by that partner for the Government or which are the subject of his official responsibility. There would appear to be no question concerning the aptness of this provision.

Section 208 is the counterpart of the present 18 U.S.C. 434 which prohibits an employee of the Government who is interested in the profits or contracts of any business entity from acting for the Government in the transaction of business with that entity. However, section 208 reaches further than the "transaction of business" and proscribes any personal participation in a matter in which the employee may have an outside financial interest. It also expands existing law by triggering his disqualification if his spouse, child, or persons with whom he has business connections have an interest in a matter coming before him. Disqualification caused by insignificant interests may be waived by the employee's superiors.

The question has arisen whether the interest of a child who has attained his majority would disqualify his parent under this section. It is my understanding that this result would ensue only in the case of a minor child. The committee may wish to insert the word "minor" in section 208 to clarify this point.

Section 209 in effect reenacts present law (18 U.S.C. 1914) forbidding a Government employee from receiving any compensation from a private source for his services to the Government. However, special Government employees and persons serving without compensation are exempted from the prohibition. In addition, the section clarifies existing law by specifying that a Government employee may continue to participate in a bona fide pension or other welfare plan maintained by a former employer.

Section 218, which has no parallel in the present statutes, authorizes the President to void and rescind any transaction with the United States where a conflict of interest has been discovered and a person convicted under the conflict-of-interest or bribery laws. It also provides that the United States shall be entitled in these cases to recover, in addition to any penalty prescribed by law or in a contract, the amount expended or thing transferred on behalf of the Government. Since the section authorizes these actions "in addition to any other remedies provided by law," I do not believe it has the effect of modifying the decision of the Supreme Court in the Dixon-Yates matter (*United States v. Mississippi Valley Generating Co.*, 364 U.S. 520 (1961)).

Turning now briefly to section 201 of H.R. 8140, which relates to bribery, I wish to mention first that it is a substitute for several existing statutes now dealing with that subject and constitutes a single comprehensive statute applicable to all persons performing activities for or on behalf of the United States. It applies, most importantly, to public officials of all kinds and witnesses at trials, congressional hearings, and agency proceedings. I might add that it is not intended to limit in any way the broad sweep that the courts have heretofore given to the bribery statutes. And to some extent it expands present

law by forbidding an attempt to influence a public official by an offer or promise of something of value from which he, himself, will not gain but which will be to the advantage of someone else in whose well-being he is interested.

I hope that this recital of the more important provisions of H.R. 8140 and of the more important of the administration's recommendations for amendment will prove to be of value to you in your study of the bill. In addition to the proposed amendments I have described to you, the administration suggests a few minor clarifying and perfecting amendments. They are set forth, with explanations, in the appendix to this statement, where they are numbered 4 through 8, and I shall not take the time to discuss them now.

Let me observe, in ending my statement, that, as far as I know, no one disputes the need for revising the conflict-of-interest laws. Through the years, a great deal of study has taken place both in and out of Government with a view to formulating apt revisions. The bill before you represents the fruits of that study. It is a bill on which experts in the field have collaborated and which has their support. The administration, which submitted a bill of its own last year, believes that this bill carries out the objectives of its own proposals. The amendments it proposes are proffered for the purpose of improvement. The administration urges that you act favorably on them and on the bill.

Senator JOHNSTON. Do you have any questions, Senator Keating?

Senator KEATING. Yes, I would like to ask some questions, Mr. Chairman.

Mr. Katzenbach, you heard my opening statement?

Mr. KATZENBACH. Yes, sir.

Senator KEATING. The President in his message that you refer to, on April 27, 1961, recommended a dual approach to the enforcement of the conflict of interest laws, pointing out that it was often difficult to convict in criminal cases. In some cases it is somewhat of a stretch of the facts to really find a person had a criminal intent and therefore the President recommended, that there be some administrative procedure enacted to deal with conflict problems. Would you comment on that? Is that still the position of the administration? My first amendment to which I referred seeks to write into this bill something along those lines. I do not know that you have had an opportunity to see the phraseology of it?

Mr. KATZENBACH. I have not gone over the exact phraseology, but I could speak to the substance of it, Senator.

We do believe, as I have emphasized in my statement, that it is necessary to take action by administration regulation throughout this field. I simply do not believe the problems are soluble entirely in terms of criminal statutes.

We have taken such action in this administration, the action I refer to in my statement, and we would propose to continue to do that. I think we have the authority now to regulate Government employees and to discharge them for violation of executive memorandums or regulations issued by a department or agency of the Government in this field. I certainly have no objection to a provision in the law that authorizes that. I think it is unnecessary to authorize it since I think legally we presently have the power.

Indeed, the President has gone further and said, and in fact has effected coordination through members of the White House staff with respect to all agencies and departments so the regulations would be consistent in terms of their policy and effect.

Senator KEATING. You may be right, but apparently in April of 1961 the President felt that there was a need for legislation in this field and that the existing powers of administrative action were not sufficient. I would like to submit to you for your review these proposed amendments to get your idea as to whether you feel they would in any way help or hurt the legislation before us. I have the feeling that something along these lines is necessary.

Mr. KATZENBACH. I would be happy to do that, Senator.

I would like to make one more comment on that that might be of interest to you, Senator. The original administration bill did have a provision in this respect. This was eliminated in the House for two reasons. One is the one I have already given; they felt it was unnecessary. The second reason is that the format of the legislation was changed to adapt to title 18 of the code which is the criminal title, and therefore it became awkward simply in terms of the approach that was taken to include that within that particular form. I do not believe these problems are insoluble, but those are the reasons for it.

Senator KEATING. I would like to have your views as to the substance of the amendment. There have been other instances in congressional history, indeed as late as this session, where the Senate and the House have found themselves not in complete agreement, and it might be that this committee would feel it would be appropriate to include something along these lines even though the House committee did not.

Anyway, if I may, I would like to submit them to you for your views so that we can have your advice on whether the phraseology is proper if we desire to take such action in this committee.

Senator JOHNSTON. We will be glad to have those questions and to have the answers.

Senator KEATING. We can perhaps ask the Deputy Attorney General to just give us a letter for the record with regard to these amendments.

Senator JOHNSTON. That will be fine.

Mr. KATZENBACH. We will be happy to do so, sir.

(The information referred to follows:)

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., July 23, 1962.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR SENATOR EASTLAND: During the Judiciary Committee hearings on H.R. 8140 on June 21, 1962, a number of questions were raised by members of the committee upon which written comments were requested or which required study and consideration. This letter is addressed to these questions. Specifically, comment is directed to (1) the amendments proposed by Senator Keating, (2) the suggestion by Senator Johnston that a savings clause might be needed in the bill with respect to offenses committed under present laws prior to enactment of H.R. 8140, which would repeal these laws, and (3) the question raised by Senator Hruska as the effect of the bill on part-time U.S. Commissioners. There is also included comment upon certain of the recommendations of the Association of the Bar of the City of New York and of witnesses representing retired officers.

The amendments proposed by Senator Keating would (1) incorporate in the bill a system of administrative and civil enforcement of the conflict-of-interest laws, (2) provide for the disclosure of certain *ex parte* communications received by Government agencies from Members of Congress or congressional staff members, (3) create a committee on ethics in Congress and establish a code of ethics for Members of Congress and employees of the legislative branch, and (4) prohibit gifts to Federal employees in certain circumstances. The third amendment is a matter which concerns the Congress exclusively, and, I would, therefore, prefer to make no comment with respect to it.

The second amendment, dealing with *ex parte* communications, concerns a subject upon which the Administrative Conference of the United States made recommendations on June 29, 1962. The conference took the position that standards of conduct governing *ex parte* communications should be developed by each agency in accordance with general guidelines which the conference adopted, rather than by legislation applicable to all agencies. This approach seems to be reasonable in view of the differing responsibilities and activities of each agency and is in essence the approach taken by the President in his message to the Congress of April 27, 1961, on conflicts of interest. Since the recommendations of the conference relate to *ex parte* communications generally, it appears unnecessary to single out communications originating in the legislative branch for statutory regulation. Consequently, we do not believe Senator Keating's amendment dealing with *ex parte* communications should be adopted.

Senator Keating's proposal relating to gifts would prohibit a Government employee, whether regular or intermittent, from receiving "any thing of economic value" as a gift from any person if he has reason to believe the donor would not give the gift but for the employee's official position. Subsection (a). A regular Government employee would be barred from receiving any thing of economic value as a gift from any person if the employee has reason to believe such person does business with the employee's agency, is regulated by it, or may be substantially affected by the employee's performance of duty. Subsection (b). The section contains no criminal penalties.

Although Federal law contains some statutory prohibitions relating to gifts, they are miscellaneous provisions operating in limited areas, e.g., 5 U.S.C. 113 (prohibition of presents to superiors) and 5 U.S.C. 174d (termination of contracts because of gifts by Department of Defense contractors to Government employees). General prohibitions restricting the receipt of gifts from private sources at the present time are principally a matter of individual agency regulation. A White House memorandum of July 20, 1961, to the heads of all departments and agencies, laid down minimum standards for the guidance of the latter in promulgating regulations for the conduct of employees, including a prohibition against the acceptance of gifts which is substantially similar to subsection (b) of Senator Keating's amendment. Executive Order 10939 of May 5, 1961, in addition, prohibits heads and assistant heads of departments and agencies, full-time members of boards and commissions appointed by the President, and members of the White House staff from accepting gifts in prescribed circumstances. The President's memorandum of February 9, 1961, to the heads of the executive departments and agencies, setting forth rules designed to prevent conflicts of interest on the part of consultants and advisers to the Government, contains a similar prohibition in respect of the acceptance of gifts by the latter.

In view of the steps taken by the administration to guard against the acceptance of improper gifts by Government employees, the proposed gifts section does not appear to be necessary. However, the administration would not object to its inclusion in the bill.

If the gifts section is to be included in H.R. 8140, the term "Government employee" and "regular Government employee" should be changed to conform to the language of H.R. 8140. It is suggested that the term "Government employee" be changed to "officer or employee of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States, including the District of Columbia." The term "regular Government employee" should be changed to "officer or employee of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States, including the District of Columbia, other than a special Government employee, as defined in section 202." Section 202(a) (definition) should be amended to include in the first sentence thereof a reference to the gifts section.

Senator Keating's amendments regarding administrative measures are embodied in the proposed sections 401 and 402. Section 401 would authorize an agency head to require employees to sign a statement that they have read a summary of the conflict-of-interest rules and regulations and to report their non-Government employment.

Under section 402(a) the head of an agency would have broad disciplinary authority, including the power of dismissal, for violations of the act or regulations thereunder. Under section 402(b) the agency head would have authority to impose restrictions upon the appearance before the agency of former employees or other persons who have violated the act or to restrict their dealings with the agency. Provision would be made for hearings and judicial review. Section 402(c) would authorize the Attorney General to bring a civil action in a district court to recover triple damages against Government employees and former Government employees who make economic gain from violations of the conflict-of-interest laws. Other subsections would provide for publication of findings and decisions under section 402, except when inconsistent with national security, and would provide a 6-year statute of limitations.

Section 402 is excerpted from S. 603, 87th Congress, introduced by Senator Javits (for himself and Senator Keating), which applies only to the executive branch and which adopts basically a different approach to the problem of conflicts of interest than does H.R. 8140. The latter, in its present form, constitutes almost wholly an amendment to title 18, the Criminal Code, and affects, in part, Members of Congress, as well as Government employees. Thus, problems of integrating section 402 into the fabric of H.R. 8140 arise. For example, if section 402 is to be incorporated in H.R. 8140, the following terms will require definition: "Government employee" and "agency." Both these terms are defined in section 2 of S. 603, but it is not clear whether the same meanings are intended in section 402.

Although the administration believes that section 402 is unnecessary because the agencies possess the power to make comparable regulations, it would not object to some provision relating to administrative or civil remedies. However, it is our view that section 402 is too elaborate and does not fit into the scheme of H.R. 8140. A more suitable provision, it seems to us, is the section proposed by Roswell B. Perkins in his testimony before the committee on behalf of the Association of the Bar of the City of New York. This section would impose upon the President and agency heads the duty of issuing regulations necessary or appropriate to carry out the purposes of the act. The section would make each agency head responsible for administration and enforcement within his agency of the act and regulations thereunder, and would give him power to take appropriate disciplinary action, including suspension. Procedures, including judicial review, would correspond to those applicable for disciplinary action generally. Agency heads would be authorized to require the filing of appropriate statements, reports, and certifications by employees and persons appearing before or dealing with the agency.

In summary, the administration would not be opposed in principle to the amendments which Senator Keating has proposed relating to gifts and to administrative and civil remedies although we are of the view that they are unnecessary. If the Judiciary Committee determines that provisions of this nature should be included, attention should be given to clarifying the amendments as indicated herein and consideration also should be given to Mr. Perkins' proposal as an alternative to Senator Keating's amendment on administrative and civil remedies.

Senator Johnston expressed concern that H.R. 8140 does not contain a savings clause preserving the Government's right of prosecution, under the statutes it would repeal, with respect to offenses committed prior to the enactment of the bill. It is my opinion that it is unnecessary to include a specific savings clause in H.R. 8140 because section 109 of title 1, United States Code, would accomplish the same purpose. Section 109 provides:

"The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability * * *."

The question raised by Senator Hruska as to whether part-time U.S. commissioners should be subject to the bill should be considered in connection with the letter to Senator Eastland of June 15, 1962, from Judge William F. Smith, chairman, Committee on the Administration of Criminal Law, Judicial

Conference of the United States. This letter states that the members of the Judicial Conference, at their March 1962 meeting, recommended disapproval of section 205 of the proposed legislation, but only in its application to part-time U.S. commissioners.

It has been and continues to be the position of the administration that the legislative and judicial branches of the Government should determine for themselves the extent to which the conflict-of-interest laws should apply to each. We would have no objection, therefore, to excepting part-time U.S. commissioners from H.R. 8140 to whatever extent the committee considers desirable. Part-time commissioners could be included within the definition of "special Government employee" by including the phrase "or a part-time United States commissioner," following "Columbia," in line 15, page 7 of the bill. This would have the effect of limiting the application of sections 203, 205, 207, 208, and 209 to part-time U.S. commissioners to the same extent as those sections affect "special Government employees," as defined in section 202. A second alternative would be to except part-time U.S. commissioners specifically from section 205. This could be done by adding "(except part-time United States commissioners)" after "Government" on line 6, page 11, of the bill. Another alternative would be to include part-time commissioners within the definition of "special Government employee" on page 7 but not subject them to the 130-day limitation. This could be accomplished by eliminating the period after "basis" in line 20, page 7, substituting a comma, and adding immediately thereafter "or a part-time United States commissioner."

The Association of the Bar of the City of New York recommended that the word "business" in line 5 on page 17 (in sec. 208) be eliminated on the ground that self-dealing in connection with nonprofit corporations is objectionable. The administration concurs in this recommendation in order to remove the basis for an argument that the term "business organization" does not include an organization of this nature.

The statement made at the hearings by the spokesman for the Commissioned Officers Association, Public Health Service, and the Association of Commissioned Officers, Coast and Geodetic Survey, recommended that the term "uniformed services" be substituted for "Armed Forces," as used in section 206 of the bill. The Retired Officers Association concurred in this recommendation. The administration does not object to this proposed amendment.

I trust that these comments will be of service to you and your committee.

Sincerely yours,

NICHOLAS DEB. KATZENBACH,
Deputy Attorney General.

Senator KEATING. The other matter that I would be happy to have your comment on, and it was also the subject of discussion in the President's message of April 27 of 1961, is ex parte communications to agencies by Members of Congress.

Members of Congress have been criticized for seeking to influence agencies. I can only speak for myself. I do not think it is proper to try to influence the decision of a quasi-judicial agency. However, I think it is proper to make certain communications with agencies, and it is important to Members of Congress to have the guidelines drawn.

I think it would be helpful to have any such communications made a matter of public record so that if a letter is written by Senator Johnston, or Senator Keating, or someone else to an agency, no one will say "They are trying to influence the agency." You can read the letter and it is a part of the public record.

I think that the President might have had such a situation in mind when he made his recommendation. That is my second amendment. And that apparently is not in this bill.

Can you give us the history of that, or is there any change in the administration's viewpoint?

Mr. KATZENBACH. No; there is no change in the administration's viewpoint, Senator. It was not included in the bill for this reason. The problem of ex parte communications is a difficult one. The solu-

tion that you propose, to put everything in the record, is one that, from my own limited study and knowledge, I would think would be a very good suggestion.

This problem was given to the Administrative Conference of the United States when it was set up for their comments and views and for their proposals. It is my understanding that they will make proposals dealing with the problem of ex parte communication. Because they have it actively under consideration there it is not included at this time within the administration's proposal, but I would hope that the conference would report on that in January of this coming year and will have recommendations for dealing with our problem.

Senator JOHNSTON. I think the Congress would be glad to have something on that subject. I know myself it becomes embarrassing sometimes to turn the constituents down. They feel you ought to at least present their feelings to the agency.

I know in talking sometimes I always start the conversation by saying, "I want you to know that I am not trying to exert any influence upon your decision, but at the same time I thought it my duty to call your attention to these facts."

I think that Senators agree that this is often the case, and it does become embarrassing to either turn down the request of a constituent or go ahead and bring this to the attention of the particular agency.

Senator KEATING. Well, if I may then, I will see that these amendments get into your hands for formal answers which can be made a part of the record as to the position of the Department with reference to them.

Mr. KATZENBACH. Very well.

Senator JOHNSTON. I have one more question.

I have read this bill very carefully, however, there is one thing that we want to guard carefully, and I think the Department of Justice also wants to guard very carefully, and that is the question of whether or not we have a saving clause in this bill. That is in regard to matters that have occurred in the past in violation of either the conflict of interest or bribery laws, that you should not change the length of the sentence given for a crime committed in the past.

What is your thought in this regard?

Mr. KATZENBACH. Well, this bill, being a criminal statute, could apply only prospectively to acts after its enactment. The prior law which it repeals would continue in force for the purpose of prosecution of any prior events. I think that is clear.

Senator JOHNSTON. I am a little bit doubtful of that. I know in the supreme court in South Carolina, when the liquor law was changed to make the sentence a little stiffer, there was a case where they had already tried the defendant and convicted him, and our supreme court threw it out on the ground that the legislature had changed the law and changed the conditions upon which the crime was committed.

So that is the reason I am calling it to your attention.

Mr. KATZENBACH. If that is not clear, Mr. Chairman, it certainly should be because that is the intention, and I would be happy to consider that as well.

Senator JOHNSTON. If you remember, after they changed the prohibition law, we had several cases that went to the Supreme Court after that, right along this line, and we had that question come up.

I think you gentlemen can see what I am talking about so that we make it clear in the act that all these cases shall be status quo, so to speak, and that this does not change their status but only changes the status for future cases.

Mr. KATZENBACH. For future cases.

Senator JOHNSTON. Do you have any questions, Senator Hruska?

Senator HRUSKA. No, thank you, Mr. Chairman, not at this time.

Senator JOHNSTON. Senator Ervin, do you have any questions?

Senator ERVIN. I am not quite familiar with the proposition, but I received a communication from a retired military officer objecting to certain passages of the bill, and indicating that the situation respecting retired officers should be clarified.

I was unable to be here when you began your testimony and do not know whether you touched on that—

Mr. KATZENBACH. I testified only, Senator, that we left the situation of retired military officers exactly where it stood. Now to be perfectly candid about that, we did so because it has been a matter of controversy for some time and we did not feel capable of resolving that problem. So we left it as is.

Senator ERVIN. I am very gratified to note that the Department has accepted criticism which Senator Hruska and myself voiced about the provision of this bill relating to Reserve and National Guard officers who were called to active duty for an extended period of time. I believe you have an amendment that takes care of our objection?

Mr. KATZENBACH. Yes, we do. If they are recalled involuntarily, then they are treated as special Government employees. If, as is the case with many officers formerly in the Reserve who are serving extended active duty voluntarily, we treat them the same way we would treat a regular military officer.

Senator HRUSKA. Mr. Chairman?

Chairman JOHNSTON. Senator Hruska.

Senator HRUSKA. Mr. Chairman, I should like to direct Mr. Katzenbach's attention to the problem which would confront part-time U.S. commissioners. I have here a tabulation prepared by the Administrative Office of the U.S. Courts which indicates that there are some 483 members of the bar who are serving as U.S. commissioners. I presume they are part time and that they engage in the practice of law. The proposed revision which we have here would seem to preclude this outside practice and would bar them from serving as an attorney for anyone in connection with—

any proceeding, application or request for a ruling or other determination, contract claim, controversy, charge, acquisition, arrest or other particular matters in which the United States is a party or has a direct and substantial interest.

Now this provision, if it is enacted, would preclude these part-time commissioners, who are also attorneys in private practice, from handling any Federal matter whatsoever in the course of their practice.

There are 186 of these attorneys serving as part-time commissioners who earn less than \$1,000 in statutory fees each year. And it is pretty safe to predict that if this becomes law and is interpreted in the fashion which I suggest, the ranks of the part-time commissioners will be pretty well decimated. They are not going to be satisfied with earning less than \$1,000 annually which would usually represent a very low hourly rate for the duties they render if they are going to be penalized

to this extent. Would you have any comment on this, Mr. Katzenbach?

MR. KATZENBACH. Yes, Senator, I would.

I call your attention to section 202(a) which defines the term "special Government employee," and it means only an officer or employee of the executive or legislative branch—we only have "executive branch" here but we propose "or legislative branch"—of the U.S. Government, or with any independent agency of the United States or of the District of Columbia.

Senator KEATING. What section is this?

MR. KATZENBACH. Section 202(a).

Senator JOHNSTON. That gives the limitation as 2 days, but I do not think it does any more than that. If a man is employed by the year, I do not think that answers the question of the Senator.

Senator HRUSKA. Yes, there is serious doubt in my mind. The special Government employee, as you define him there, renders duties for 130 days out of 365. Suppose the commissioner devotes 1 hour 1 day and 2 hours the next and so on. There may be 130 or 140 days upon which he does something. Now, will he be included in this definition or will he not?

I believe that we ought to determine that and decide whether it would be good policy to expressly exclude them or whether it would be better to state that they are included. And then, of course, we will be coming to you and asking, "Where will we get the U.S. commissioners who are so very important in the prosecution of the duties of your Department of Justice?"

MR. KATZENBACH. That is quite correct, Senator, and perhaps it should be clarified in that respect. I thought the bill was clear as to the fact that "special Government employee" apply only to employees of the executive branch of the Government, and we were not touching the problem of employees of the judiciary. But I confess I cannot find that in the bill as it is drafted, and, if so, it should be clarified in that respect.

That was the intention. We added "or legislative," propose that, in section 202 because it was suggested at the meeting last August with this committee that there was a need often for special consultants to the committees of Congress. And we added it for that reason.

Senator HRUSKA. That is fine as to section 202, Mr. Katzenbach—

MR. KATZENBACH. Yes, I think we should have a definition of "Government employee" that takes care of the—

Senator HRUSKA. That is true as to section 202. However, I direct your attention to section 205 which says:

Whoever, being an officer or employee of the United States in the executive, legislative, or judicial branch * * *.

That is pretty broad language, and I am sure it includes U.S. commissioners.

MR. KATZENBACH. Yes, sir, I believe it does. I am not sure how the problem should be substantively resolved. If the man is a full-time U.S. commissioner, or is acting more than the period of special Government employment, perhaps, Senator, he should be subject to these laws—

Senator JOHNSTON. Receiving any more than a certain amount of compensation.

Senator KEATING. I am not sure this is as serious as has been indicated. These commissioners are not barred from probating wills or trying cases in State courts or many, many other things. It is only with reference to a claim against the U.S. Government. I do not know whether there is anything in the statutes or not, but I believe it would be improper for me to go into a Federal court and try a case. I do not know whether I am barred by statute. I do not think I am, but I do not think it would be proper.

Mr. KATZENBACH. The Court of Claims I think is all.

Senator KEATING. I do not think it would be proper to actually try a case in the Federal court. Now I am not sure but what it is perfectly all right to bar commissioners who are working for the United States, even at a low amount, from participating in transactions where the United States is involved. I have an open mind on it. However, I think they are not barred from general law practice.

Mr. KATZENBACH. No, they can engage in that.

Senator HRUSKA. I am not so sure about that because the law practice, if my colleague from New York will permit me to say, has changed a great deal since he and I were in it. A lawyer in the general practice can easily spend a great deal of time in the field of administrative law.

For example, a part-time U.S. commissioner may be consulted by someone who is having trouble collecting his social security payments. Isn't that a claim——

Senator KEATING. They go to their Senator on the Finance Committee. [Laughter.]

Senator HRUSKA. That is probably correct, except some of my constituents live more than 1,500 miles away from here, so they do not do that.

Wouldn't that be barred? It certainly would under section 205.

Or suppose a commissioner becomes involved in the probate of an estate. Certainly he would be entitled to probate an estate. But when he files an estate tax return, he must negotiate certain aspects of it before it is in final form in order to determine what sum is to be paid.

With respect to these preliminaries, would he be barred by this statute? I think he would.

If you tell a lawyer that he cannot handle tax matters or cases involving the various Federal agencies, you have just told him, "You better resign as U.S. Commissioner." He can't afford to restrict his practice this much. And it applies to so many.

I should like leave, Mr. Chairman, to have placed in the record a breakdown showing the number of U.S. Commissioners who are serving on a part-time basis. This was furnished to me by the Administrative Office of the U.S. Courts. It will help to illustrate the extent of the problem.

Senator JOHNSTON. That will be made a part of the record.

(Senator Hruska submitted the following statement for the record:)

The Administrative Office of the U.S. Courts has furnished me with the following information about the U.S. Commissioner system:

"Six hundred eighty-five U.S. commissioners were in office as of February 20, 1962. A total of 20 Commissioners report that they have no other occupation, but only 5 of these are recognized as full-time Commissioners by the Administra-

tive Office for the purpose of reimbursement of office expense. The 665 Commissioners having other vocations have reported their occupations as follows (as of Feb. 20, 1962) :

Clerks of U.S. District Courts-----	8
Deputy clerks of U.S. District Courts-----	48
Referees in bankruptcy-----	3
Court reporters-----	1
Practicing members of the bar-----	483
Miscellaneous-----	122

"At the present time, 50 Commissioners are covered by the Civil Service Retirement Act. These are Commissioners whose earnings for 3 consecutive years were \$3,000 or more per year as required by 5 U.S.C. sec. 2252(g)."

It has been brought to my attention by members of the judiciary and others that section 205 of H.R. 8140 is now drawn in terms sufficiently broad to include part-time U.S. commissioners, and would prevent such commissioners from serving as an attorney for anyone in connection with "any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest." In substance, it is likely that this provision, if enacted, would preclude any part-time commissioner who is also an attorney in private practice from handling any Federal matter in the course of his private practice.

It is pointed out that since there are 186 licensed attorneys who are also part-time commissioners earning less than \$1,000 in statutory fees each year, it is safe to predict that enactment of H.R. 8140 in its present form will decimate the ranks of part-time commissioners.

Hence, the conclusion is that the bill should be amended so as to make special provision for part-time commissioners.

Senator ERVIN. Now I am a little troubled about page 12—excuse me, had you finished, Senator Hruska?

Senator HRUSKA. I am finished. I am sure we have not disposed of it, but my intention this morning was to raise the point for further discussion and consideration.

Senator ERVIN. This bill has a lot in it.

On page 2, "for the purpose of this section," I do not know whether that is confined to section 202, "'public official' means Member of Congress, or Resident Commissioner, either before or after he has qualified, or an officer or employee or person acting for or on behalf of the United States * * *" and so forth.

Now on page 12 it says :

Nothing herein or in section 203 prevents an officer or employee, including a special Government employee, from acting, with or without compensation, as agent or attorney for or otherwise aiding or assisting his parents, spouse, child, or any person for whom he is serving as guardian, executor, administrator, trustee, or other personal fiduciary. * * *

and so on.

Now would that exclude a Member of Congress acting as a personal fiduciary? In other words, is there a distinction between "public official" and "public officer"? I cannot see any reason why a Member of Congress should be excluded from acting as a personal fiduciary and receiving compensation.

Mr. KATZENBACH. Senator, the definition that you read in 201 is confined to the bribery section of the act and does not apply over here to the language that you read from the other section.

Now there is nothing in existing law or elsewhere in the statute that prohibits a Member of Congress from performing these functions. There would be things in the statute which would prohibit, or be

thought to prohibit, these other categories of people. For that reason they are exempted in this limited situation.

Senator ERVIN. I am a little concerned about this. I have a friend who appointed three of us as trustees of an estate. One is a newspaperman, another is a banker, and another one is a lawyer. I was a lawyer at that time. It was through a will.

We have a controversy with the Federal Government about taxation, a question about taxation. Now I would like to know, for my own personal benefit, whether I can argue that with them, the agency, under this as a trustee. I do not want to end up in Alcatraz. [Laughter.]

Mr. KATZENBACH. I was looking here, and I do not have with me the only possible application of existing law which would be 18 United State Code, section 283, which to my recollection in part applies to Members of Congress and refers, I believe, to the receipt of compensation for—no, that is 281. Section 281 does not include Members of Congress.

Do you have it here?

Mr. LINDENBAUM. Yes.

Mr. KATZENBACH (reading) :

Whoever being an officer or employee of the United States or any department or agency thereof, or of the Senate or House of Representatives, acts as an agent or attorney for prosecuting any claim against the United States or aids or assists in the prosecution or support of any such claim * * *

And it goes on.

But that does not apply to Members of Congress or Members of the Senate. It does apply to officers or employees of the Senate or House of Representatives, but not to Members.

Senator ERVIN. I do hope that we can clarify these laws because they are very confusing in their present state.

I have read decisions on the point, and about come to the conclusion that a Member of Congress, who happens to be a trustee or executor, could not receive any fees. I doubt whether he could charge any fees under the present laws for anything he did in connection with any agency or department of the Government.

In other words, he could not go up and argue and fuss with Internal Revenue Service. However, he could go into a Tax Court case—he could forgo his compensation as trustee and go in and argue with the Internal Revenue Service, and then when they got through with him he could go in the Tax Court and charge in the Tax Court.

Mr. KATZENBACH. I think that is an absolutely correct statement of the law, that under 281 of the Criminal Code he is prohibited from doing this if he receives compensation for doing it, and not otherwise. There is nothing that prohibits him from appearing with or without compensation in a court, except for the Court of Claims. He cannot appear in the Court of Claims. And I think that is the status of the existing law, which I think demonstrates as well as anything that it has been made by a series of ad hoc statutes with wide overlap and no great consistency in terms of any very discernible principle.

Senator ERVIN. Now is it your interpretation of the last paragraph, starting with line 20 on page 12 and ending on line 7 on page 13, that that will relieve a Member of Congress from law statutes in a case where he is acting primarily as trustee or executor rather than just as a practicing attorney?

MR. KATZENBACH. No, sir, my view would be that this language does not apply to a Member of Congress, nor is there any prohibition which applies to a Member of Congress in that respect.

The only prohibition that applies to a Member of Congress is the one from existing law, section 204, which is practice in the Court of Claims, and my recollection is that there is no other prohibition in this statute—let me retreat from that statement. I am incorrect, I am informed.

We leave the situation in this respect exactly as it is. Section 203 prohibits the receipt of compensation for these representational activities, but does not preclude a Member of Congress from representing if he receives no compensation for it. That is the existing law, and that is left exactly as it is.

Senator ERVIN. In other words, he still cannot represent an estate. If he does, he cannot take any fees as executor?

MR. KATZENBACH. That would be correct. In the case you mention, that involves a claim against the United States, and he cannot participate in any fee with respect to that.

Senator ERVIN. This language on line 20, does that refer to this one section and nothing else?

MR. KATZENBACH. That refers to section 205 and part of section 203, but it applies only to officers or employees, which would not include a Member of Congress.

Now it was the administration's viewpoint on this bill that matters affecting Members of Congress were best left to Members of the Congress to resolve. We made no recommendations in that respect, and I would make none now. The House committee left the existing law exactly as it is with respect to Members of Congress, and that is as it is and I feel it would be inappropriate for me to comment on that.

Senator ERVIN. Would not that relieve the Secretary of Commerce, or any of the Cabinet officers, of inhibitions? They could go and practice even before their own departments, couldn't they, if they happened to be executors and administrators?

MR. KATZENBACH. They could not practice with respect to anything in which they had participated personally and substantially as a Government employee.

Senator ERVIN. I see.

MR. KATZENBACH. It could only be done if the Government official responsible for the position approves—

Senator ERVIN. The Secretary of Health, Education, and Welfare, however, could make an appearance and receive compensation under this for a parent, on a matter before the Internal Revenue Service or Treasury.

MR. KATZENBACH. As administrator, trustee, or personal fiduciary there would be nothing in this statute which would prevent him from doing so. It would not be a criminal offense for him to do so, that is correct.

Senator ERVIN. Is it your interpretation that as trustee of an estate I can be relieved of all responsibilities under the law? I can go in and argue to my heart's content with the Internal Revenue Service about a matter of taxation affecting the estate, providing I do not receive any compensation to do so?

MR. KATZENBACH. That is what the existing law provides, Senator, as I read it.

I perhaps ought to add that of course the hypothetical that you gave with respect to the Secretary of Commerce, or HEW, that is prohibited by Presidential regulation issued by this administration with respect to heads and assistant heads and White House employees who are forbidden to do anything of this nature. But it would not be a criminal offense under the statute. Indeed, it would not be a criminal offense under the existing law for that to be done.

Senator JOHNSTON. Any other questions?

We are certainly glad that you have come before us this morning. You can answer these questions brought up by Senator Keating through correspondence with the committee.

Mr. KATZENBACH. I will certainly do the best I can, Senator.

Senator JOHNSTON. Thank you very much, Mr. Katzenbach.

We have Congressman John V. Lindsay of New York here. I believe he has someone he wants to introduce at this time.

STATEMENT OF HON. JOHN V. LINDSAY, A REPRESENTATIVE IN CONGRESS FROM THE 17TH CONGRESSIONAL DISTRICT OF THE STATE OF NEW YORK

Mr. LINDSAY. Mr. Chairman and members of the committee, I am not going to testify at any length. In fact, I do not think I will testify at all. I will submit the statement I prepared for the record.

The House has been in session since 11 o'clock on the farm bill, and we are having a series of quorum calls and teller votes right now. So I am going to go back.

I do want, first of all, to introduce your next witness who will testify, and say a word about him, and about the bar association committee that is the author of 80 percent of the House bill and of this book, which is probably the leading work on the subject of conflicts of interest in the Federal branch that has been written to date.

The witness is Mr. Roswell Perkins who is the chairman of a special committee of the Association of the Bar of the City of New York. Mr. Perkins' committee worked for well over 2 years straight on this subject with a fund of money granted by the Ford Foundation to see if sense could be made out of chaos in the area of conflict of interest legislation in the executive branch. I was pleased to have been appointed to that committee before becoming a Member of Congress, and was one of the team of 10 people which worked on this subject and drafted the bill.

Mr. Perkins is accompanied by Mr. Charles A. Horsky, a partner in Covington & Burling here in Washington, who devoted his skills and professional talents and energy to this subject, and also Alexander C. Hoagland, Jr., who is a constituent of mine along with Mr. Perkins. Mr. Hoagland is a New York lawyer and one of the country's experts on the subject of conflict of interest in the Federal branch.

This committee produced this book and a bill. That bill was the bill that I introduced in the House in the 86th Congress and my distinguished colleagues from New York, Senators Keating and Javits introduced in this body. A perfected bill was introduced in the 87th Congress. Thereafter the House started to work on this subject.

The thanks of the country and of the Congress should go to Mr. Perkins, Mr. Horsky, and Mr. Hoagland and the other members of

that bar association committee in New York for the attention that they gave to the subject, and the time and the skill with which they tried to get a good bill through the House.

I should like to compliment also Mr. Katzenbach of the Justice Department for the way in which he worked with the House Judiciary Committee on the subject, with the chairman, Mr. Celler, and myself as one of the coauthors of the bill. The work of the House Judiciary Committee was a composite and compromise of largely the work of the bar association committee here represented, the Department of Justice, and the Judiciary Committee of the House itself. It is admittedly a compromise, and by virtue of that fact, it can stand some perfection. On the whole I would agree with the testimony of Mr. Katzenbach, and I will agree with the testimony to come of Mr. Perkins, as to the improvements that can be made in the bill. If the Senate would make those improvements, then when the matter goes to conference, hopefully we will come out with something that could be almost near perfect, which would be a remarkable achievement in this difficult and complicated area.

In the area of gifts, I would prefer to see the recommendation that will be made by Mr. Perkins incorporated in the House bill. I must tell you, however, that this was controversial in the House Judiciary Committee. The majority of the members of the committee preferred to see some adjustments to the existing criminal bribery statutes rather than to have any separate section on the subject of gifts. There again I would have dissented from that but, on the other hand, it was important to get a bill through the House. I should like to add parenthetically that the House bill came up under suspension of rules which means, of course, that there were no amendments permitted. The reason it came up under that procedure is that this is a subject on which it is easy to demagog, and we thought generally speaking we were being realistic in this area in trying to write a law under which the executive branch would find it possible to recruit talent and information, and not unduly penalize them in the process. We were fearful that those Members of Congress who liked to be more righteous than God from time to time would load the bill with crippling amendments that would indeed destroy the whole function and purpose.

There is an area that I would strongly disagree with Mr. Katzenbach, as I understood his statement, and that is in the area of partnerships. I think that Mr. Katzenbach was suggesting that insofar as Government executive branch lawyers are concerned, that the House bill might make it more difficult to recruit legal talent because of stringencies on practice when they return to their firms. I am not sure that I understood him, but I think that the House bill protects the individual lawyer in the firm in this regard. Don't forget that, as I understand present law, the disqualification of a partner disqualifies the entire firm. So that if a partner who leaves the executive branch is barred forever from dealing or switching sides in an area in which he has directly participated, if he becomes a member of a firm, under case law, Federal case law as I read it, that firm is disqualified totally from engaging in that area. What the House bill has done is to say, "All right, the former Government employee is forever barred in any area where he has directly participated himself, and if he should join a firm, that firm is barred for 2 years, but

after 2 years the imputation stops.” In respect to matters in which a former Government employee has had general supervision, and not necessarily direct participation, here again the House bill would not bar under the doctrine of imputation the firm of which he becomes a member.

I am afraid that if Mr. Katzenbach’s theory is accepted, and that whole partnership provision in the House bill is removed, it will make more trouble in the recruitment area than we have under present law. I therefore urge this distinguished committee to go easy when it comes to changing the House bill in that regard.

Lastly and finally, I would support the introduction into the Senate bill, certainly, of administrative procedures designed to guide along the problem of conflicts of interest in the executive branch on a day-to-day basis. This should not be primarily a criminal problem, and it should not be primarily a problem of men being recruited by the Federal branch or leaving the executive branch at their peril. The guidelines should be clear.

No law that can be written by Congress is going to answer all the questions. Therefore, it seems to me highly desirable that the recommendation of the bar association committee that there be created an administrative office to handle individual problems, clarify areas as they arise, is highly desirable.

With that, Mr. Chairman, I have inserted in the record the prepared testimony and I hope the committee will be able to listen with some care and attention to the testimony of my friend and constituent from New York, Roswell Perkins, and the other two gentlemen of the bar association committee who are also here, Mr. Horsky and Mr. Hoagland.

Senator KEATING. Mr. Chairman, may I just say a word?

I know of the deep interest of Congressman Lindsay in this problem. He has talked with me about it on a number of occasions. He has been a pioneer in the effort to do something in this field, and I think he should not leave here without our commendation for the very effective work which he has done.

It is difficult to get any committee to agree on anything in this field, and I think it is quite remarkable that you and your associates, Congressman Celler and others, were able to get this bill out of the committee and through the House in almost any form. When I was there I was trying to do the very same thing without success, and I have very high regard for someone who can do that.

I join, Mr. Chairman, with Congressman Lindsay in introducing Mr. Perkins who, with his associates, has made such a deep study of this problem. There is probably no one better informed person on this subject than the witness we are about to hear.

I appreciate your being here, Congressman Lindsay, to give us the benefit of your views which will be read carefully as they should be.

Mr. LINDSAY. Thank you, Senator Keating.

Senator ERVIN. I regret that I will not be able to stay and hear the presentations, because of other pressing engagements, but I will certainly read them. I am very much impressed by some of your remarks about the difficulties law firms find themselves in, or will find themselves in. I do not think any law firm could stay in existence unless they could practice before a Federal agency or department.

Mr. LINDSAY. Thank you very much, Senator Ervin.

Senator JOHNSTON. We will wait just a few minutes. That was the bell ringing for the Senate to go into session. First, let me say to you, Congressman, that we appreciate your interest in this matter and we appreciate your coming over here especially when you are so rushed over in the House at this particular time. Moreover, we appreciate your interest and the work you have done in this particular field. We are certainly glad to have you come before us. I believe you are going to leave something for the record?

Mr. LINDSAY. Yes. But I think it has already been admitted. I will leave a copy here.

Senator JOHNSTON. We would like to have that and it will be made a part of the record.

Mr. LINDSAY. Thank you.

(The prepared statement of Hon. John V. Lindsay, a Representative in Congress from the 17th Congressional District of the State of New York, is as follows:)

TESTIMONY OF JOHN V. LINDSAY BEFORE THE SENATE JUDICIARY COMMITTEE IN BEHALF OF THE CELLER-LINDSAY CONFLICTS-OF-INTEREST BILL, H.R. 8140, JUNE 21, 1962

Mr. Chairman and members of the committee, I am delighted to be here today in order to speak on behalf of the House bill on conflicts of interest, a most important piece of legislation that passed the House of Representatives in the first session of this Congress. This is a complicated subject and one which does not lend itself to sensational news or, sadly, general public interest. It is only when scandal erupts that there is a loud outcry calling for appropriate legislation in the area of conflicts of interest.

I believe that the bill that the House passed a year ago, known as the Celler-Lindsay bill, is a thoroughly constructive piece of legislation. You may call me biased in the bill's favor if you wish, because I was one of the authors of the bill and have spent many years studying this subject.

In 1957, before coming to Congress, I was privileged to be appointed a member of a special committee of the Association of the Bar of the City of New York, funded by the Ford Foundation, to study conflicts of interest in the executive branch of the Federal Government.

Members of this special committee, other than myself, were the following:

Roswell B. Perkins, chairman, former Assistant Secretary of Health, Education, and Welfare.

Howard F. Burns, distinguished Cleveland lawyer and member of the Council of the American Law Institute.

Charles A. Coolidge, eminent Massachusetts lawyer, former Assistant Secretary of Defense for Legal and Legislative Affairs, and former Special Assistant to the Secretary of Defense to recommend on the Hoover Commission reports and on reorganization.

Paul M. Herzog, former Chairman of the National Labor Relations Board, and former associate dean of the Graduate School of Public Administration, Harvard University.

Alexander C. Hoagland, Jr., distinguished New York lawyer and former fellow, the Association of the Bar of the City of New York.

Everett L. Hollis, corporation counsel, General Electric Co., and former General Counsel of the Atomic Energy Commission.

Charles A. Horsky, eminent Washington lawyer and partner in Covington & Burling.

John E. Lockwood, leading New York attorney, former General Counsel, Office of Inter-American Affairs, Department of State.

Samuel I. Rosenman, eminent lawyer and former special counsel to Presidents Roosevelt and Truman.

The staff director was Prof. Bayless Manning, of Yale Law School, and the associate staff director was Prof. Marver H. Bernstein, of Princeton University. Professor Manning subsequently became one of the three Presidential advisers of this administration on the subject of conflicts of interest.

In 1960 our committee published a book entitled, "Conflict of Interest and Federal Service," which is regarded as the leading study on the subject of conflicts of interest in the executive branch. Our committee drafted a bill which I introduced in the 86th Congress. I reintroduced a perfected bill, H.R. 3050, in the 87th Congress. A companion bill was introduced in the Senate by my distinguished colleagues, Senators Javits and Keating.

The House bill is a composite of the efforts of the House Judiciary Committee, spreading over a period of years, of the special committee of the Association of the Bar of the City of New York, and the administration's own review of the subject. The bill as passed by the House was built largely around the recommendations of the bar association committee.

We approach this subject with two themes in mind. The first is that ethical standards in the U.S. Federal Government must be beyond reproach. The second is that the Federal Government must be in a position to obtain the personnel and information it needs to meet the demands of the 20th century. These themes are coequal. Neither may be safely subordinated to the other.

A conflict of interest does not necessarily presuppose that action by the official favoring one of these interests will be prejudicial to the other, nor that the official will in fact resolve the conflict to his own personal advantage rather than the Government's. If a man is in a position of conflicting interests, he is subject to temptation however he resolves the issue. Regulation of conflicts of interest seeks to prevent situations of temptation from arising. An Internal Revenue agent auditing his own tax return would offer a simple illustration of such a conflict of interest. Perhaps the agent's personal interest in the matter would not affect his discharge of his official duty; but the experience of centuries indicates that the contrary is more likely, and that affairs should be so arranged as to prevent a man from being put in such an equivocal position.

The danger of such conflicts of interest was noted long ago; even before the Sermon on the Mount warned against serving two masters. Plato had forbidden his philosopher kings to hold any personal economic interests whatever. In America the problem was recognized early. When the United States was new, its first Congress forbade the holder of the office of Secretary of the Treasury to invest in Government securities; and the bulk of our present conflict of interest statutes dates from the 19th century. But since the end of World War II the attention of the American public has been drawn to conflict-of-interest problems with a new frequency and intensity.

I should like to talk about the aspect of the bill not concerned with the subject of bribery. I am more concerned for the moment about those sections which deal with the classical subject of conflicts of interest. The House bill sought in this connection to modernize and to make understandable seven ancient statutes which since the middle of the 19th century have formed the core of legislation and general application dealing with conflict of interest problem among executive branch employees.

In general, what do these seven statutes do? Three of them restrict Government employees or former employees from assisting others in the prosecution of claims against the United States. A fourth is sighted essentially on the same target but is focused a little differently: it forbids Government employees to assist others for pay before a forum of the executive branch in any matter in which the United States is interested. The fifth statute prohibits a Government official from acting for the Government in transactions with a business entity in which he has an economic interest. The sixth forbids the official to receive pay from non-Government sources in connection with his official services. And the seventh forbids the official to receive pay for assisting another in obtaining a Government contract.

More tersely, five of the seven provisions forbid officials to assist outsiders in their dealing with the Government; one requires officials to disqualify themselves from acting in Government matters in which they have a conflicting personal economic interest; and one prohibits outside pay for Government work.

Some incidental facts about these statutes are of preliminary interest. Five of the seven were enacted between 1853 and 1872. Three were responses to the venalities of the Civil War. All but one are criminal statutes, in the style of the 19th century, with differing penalties ranging from \$1,000 to \$10,000 and from 6 months' to 2 years' imprisonment. It is the executive branch that feels the main sting of the provisions, with Members of Congress expressly covered by only two of them, and the judiciary by none. Five apply to employees when in Government service; the other two—both of them prosecution of claims

statutes—restrict the activities of former Government employees for a period of 2 years. No two of the provisions use the same drafting language in defining the scope of their application or the offense proscribed, though three of them refer expressly to prosecution of Government claims.

For the lawyer called upon to give an opinion interpreting these statutes, they are a nightmare; they spew up one unanswerable question after another. Who is an officer or employee under section 281, for example? The term has been interpreted to include not only full-time regular personnel but part-time and intermittent personnel, whether or not paid by the Government. It is usually a surprise to an intermittent adviser to learn that he is legally an employee of the Government—and not just on the days on which he is actually doing Government work.

To take another recurrent problem under sections 281, 283, 284, and 99, what does it mean to assist in prosecuting a claim? May one appear as a witness to testify in favor of a claim against the Government? If not, what can one do if subpoenaed by the claimant? Does one act as counsel if he writes a memorandum on a point of law? Again the answers may vary from statute to statute.

Perhaps the most baffling problems of interpretation arise from the connecting phrases in the statutes—key phrases purporting to define the limits of these criminal offenses. Section 281 forbids the employee to assist the outsider in an executive forum in any “matter in which the United States is directly or indirectly interested.” In what matter coming before the executive branch is the United States not directly or indirectly interested? Section 284 forbids the former employee for 2 years to assist in prosecuting claims involving any subject matter directly connected with which he was employed by the Government. If a claimant is suing on a defense procurement contract, should the phrase be interpreted to bar a former Government employee only if he worked on that contract? If he worked on other contracts for the same kind of commodities? If he worked on other contracts for another armed service in the Department of Defense? and so forth. How direct a participant must he have been to be barred?

These statutes are shot full of exceptions. In a helter-skelter way Congress has frequently recognized that the rigidity of the general statutes on conflict of interest makes them unworkable as applied to intermittent employees and particular Government positions. The United States Code is peppered with spot exceptions and exemptions total or partial, enacted piecemeal to meet special cases. Inevitably, this process has produced an arbitrary pattern of controls and exemptions, working unequally, for no apparent reason, from position to position and from office to office. This bill would make all of these special exceptions unnecessary.

Finally, there is a great problem of varying interpretation regarding outside compensation restrictions, largely embodied in present day section 1914 of title 18. For example, to what extent are preexisting stock options, pension plans, and insurance plans outlawed compensation under the statute? When are the rights under these plans vested and when not? In an effort to comply with section 1914 and simultaneously to maintain the appointee's eligibility under these security plans, subtly differing degrees of quasi resignation or leave of absence are devised. For services carefully designated as past, substantial severance payments may be made, with the payments themselves sometimes spread forward in installments over the period of the appointee's Government service. Formal written resignations are executed for the record when the clear expectation of all concerned is that the appointee will in fact return after his stay in Washington.

No one can say with any confidence which of these arrangements, or whether any or all of these arrangements, are legal and permissible under the existing statutes. In the overwhelming majority of instances it appears that, where the statutes are recognized and considered at all, Government appointees and their lawyers lean over backward in an effort to comply, but the crude style of the ancient conflict-of-interest statutes is an inducement to artifice, and there will always be a minority ready to pursue every advantage. When compliance with the law becomes mainly a matter of form, the law is made to appear ludicrous, legal administration is undermined, the underlying policy of the law may be subverted, and the most conscientious bear the heaviest burden. And it is usually a sign that the law is out of touch with reality.

The Celler-Lindsay bill consolidates the scattered conflict-of-interest laws into one unified act, with a common set of definitions and consistent approach: broadens the scope of the conflict-of-interest laws to cover the full range of

modern governmental activities; differentiates in some respects between regular and intermittent employees and accommodates itself to the modern use of intermittent personnel; generally strengthens the restraints against conflicts of interest, and elevates to statutory level some important restraints now in regulations or not covered, particularly relating to gifts and use of office to obtain something of value from persons doing business with the Government; recognizes the legitimate private economic interests of Government employees, and permits employees to retain certain security-oriented economic interests, particularly continued benefits in outside pension plans.

More specifically, the program tightens up on existing conflict-of-interest laws in the following general ways:

First. Persons occupying a position inside Government must not be allowed to tamper with the wheels of government to the special advantage of themselves or any entity on the outside in which they have a personal economic interest.

Second. Persons occupying a position inside Government must not be allowed to help an individual or entity on the outside, where the latter is seeking to make the wheels of government move in a particular way.

Third. Persons occupying a position inside Government must not be allowed to use their office as a source of power or of confidential information for purposes of advancing their personal economic interests.

One of the significant contributions that this bill makes to this field is the clarification that it lends to a heretofore muddy field. It is important that men who lend their services to the Government have a clear idea as to where they stand insofar as outside interests are concerned and the position that they will be in after leaving Government service. For example, the heretofore murky and dangerous waters surrounding the problem of partners of Government employees and former Government employees is clarified. I refer specifically now to the committee report on pages 11 and 12 which discusses the question of past employment and partners. The status and obligations of partners of Government employees under the conflict-of-interest statutes is not specified in present law. Under the Canons of Ethics of the American Bar Association (canons 6, 36, and 37), and at common law—see *United States v. Standard Oil Co.*, 136 F. Supp. 345 (D.C., N.Y., 1955)—the activities of partners are to some extent imputed to each other and to some extent disqualify non-Government partners from activities with which Government partners have become identified. The unsettled state of the law has given rise to serious confusion as to the precise limits of the doctrine of imputation. For this reason, the bill, section 207 (c) and (d), prescribes the disqualification of partners of Government employees and former Government employees in the executive branch, the independent agencies and the District of Columbia, and the limits on such disqualification.

Section 207(c) provides that for 2 years after the termination of a Government employee's service his partners must refrain from any activities from which the ex-Government partner is prohibited from engaging by section 207(a). This means that if a Government employee or special Government employee has participated directly and substantially in a matter in which the United States is directly and substantially interested not only is he personally prohibited from representing private parties in that particular matter, but his firm is barred with respect thereto for 2 years following his departure from Government. In a sense this represents a liberalizing of present law, because under the common law doctrine of imputation if the former Government employee is forever barred from "switching sides," so would be his firm. Under this bill, the restraint is lifted from the firm, but not from the former employee, after 2 years.

In addition, section 207(d) provides that during the continued service of a partner as a Government employee or special Government employee, his firm is barred from acting in particular matters in which the Government partner has at any time participated or which is the subject of his official responsibility. This also represents a clarification. Under the imputation doctrine the firm, under present law, is barred from a great many areas, many of which are wholly unrelated to the part-time Government employee's work. The new bill narrows the disqualification to the same area.

Finally, in order to mark the limits of the imputation doctrine, section 207 provides that a partner of a present or former Government employee or special Government employee in the executive branch, an independent agency, or the District of Columbia, shall as such be subject to the provisions of sections 203, 205, and 207 only as expressly provided in subsections (c) and (d) of section 207.

In short, after a Government employee leaves the Government, his firm must for 2 years stay out of matters in which he has participated for the Government. And while the Government partner remains in the Government, his firm must stay out of matters in which he participates or has participated or which are under his official responsibility. However, it is not the intent of the provisions of section 207 (c) and (d) that the fact that a partner of a Government employee or former Government employee is also a partner in a firm in which the Government employee or former Government employee is not a member should disqualify the latter firm. Existing law with respect to the rights and obligations of the United States in the legislature and judicial branches is left unaffected by the bill.

Mr. Chairman, I wish I had time to discuss in far greater detail the provisions of this bill and the importance of the legislation in general. Suffice it to say that loopholes are closed and the lines are clarified. At the same time archaic and unnecessary provisions are eliminated.

It is vital at all times that the public interest be safeguarded and that the highest standards of integrity in the public service be maintained. It is equally vital that the Government be able to attract men of ability and competence into Government service. They will not be attracted if the law is so written that they must be unnecessarily penalized for accepting Government service. Both points of view must be accommodated; namely, a body of law which is clear, reasonable, and protects the public from abuse of office, and at the same time which makes possible the recruitment into Government service of men of talent and ability who as public spirited citizens wish to serve their Government.

Senator JOHNSTON. We will have to wait for just a moment to see whether or not we have permission to go forward.

Off the record.

(Discussion was had outside the record.)

Senator JOHNSTON. On the record. Mr. Perkins, we will let you proceed to introduce yourself, and of course if we do not get permission to sit we cannot help that.

STATEMENT OF ROSWELL B. PERKINS, CHAIRMAN, SPECIAL COMMITTEE ON THE FEDERAL CONFLICT OF INTEREST LAWS, THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK; ACCOMPANIED BY CHARLES A. HORSKY, ATTORNEY AND PARTNER, COVINGTON & BURLING, AND ALEXANDER HOAGLAND, JR., ATTORNEY AND FORMER FELLOW, THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

Mr. PERKINS. Thank you, Mr. Chairman, for the opportunity to be here.

On my left is Charles A. Horsky, who has been introduced, and on my right is Alexander C. Hoagland.

Before beginning I want to thank Senator Keating in particular for his strong support of our work in this area. As you know, Mr. Chairman, he introduced S. 603 which embodied the recommendations of the bar association.

We believe that the enactment of H.R. 8140 is a matter of great importance. We are dealing basically, Mr. Chairman, with two policies. One is the problem of recruitment in a cold war era, and the second is the protection of the Government. And we view H.R. 8140 as an effort to balance these two important concerns.

As far as recruitment in the cold war era is concerned, as we all know, the Soviet Union is able to attract and mobilize all its human resources to the services of the Government holding an international world view receptive to long-range planning. Our adversary is play-

ing the national power game with resourceful staffs, and we have to ask ourselves whether we are doing all we can to assure ourselves the needed talent for Government service and to see what policy changes could improve our position. So that we think the stakes riding at the issue of Government manpower today are high and do not permit chances to be taken. At the same time we have to watch to protect the Government because the area of Government activity is greatly expanding, as we know and as has been pointed out by Senator Ervin. There is scarcely anything today that business can do without contact with the Government at some point. Furthermore, the forms of venality are much more subtle today than they were. And, therefore, the important aspects of H.R. 8140 which are here to protect the Government in a new and expanded era of Government activity.

And also, as has been pointed out, there is a huge investment of work in H.R. 8140. It culminates a continuous effort of study inside and outside of the Congress for over 5 years. It has been made clear that it is a major goal of the administration.

The hour is late in Congress, and we do hope that a bill can get to conference as soon as possible after this committee has had an opportunity to consider it thoroughly.

Now as far as the purposes and reasons for the bill are concerned, they are set forth ably at pages 2 to 7 of the House report, and I think I would be duplicating to repeat those.

Similarly, the key provisions are summarized well in pages 8 to 17 of the House report, and I think I would be taking an undue amount of your time to repeat that in testimony.

I will say that the bill would carry out most of our recommendations, that is, the recommendations of the special committee of the association of the bar, although not all of them.

Turning to page 2 of the outline of my testimony, I would like to refer to several areas, which are not covered by H.R. 8140.

It has been mentioned that gifts are not covered. Now gifts with a provable attempt to influence an official act are squarely covered by the bribery sections. That much we can concede.

We must further concede that most departments and agencies have regulations concerning gifts, and also that the President's Executive Order 10939 of last year bars gifts, but is applicable only to Presidential appointees. A further Presidential memorandum of this year bars gifts for advisers and consultants.

Now we conclude that in spite of the existing regulations gifts should be barred by an overall statute with regulatory power in the President to carve out exceptions. And I have attached to my testimony as exhibit A, draft language for a section on gifts which is substantially identical to the amendment offered by Senator Keating this morning.

Now I would like to add that this bill, if it were enacted this year in its present form, could easily be amended in a future year to add a gifts prohibition. A gifts prohibition is not so inextricably intertwined with other provisions that it could not be dealt with separately. So, therefore, while we do think it is important and desirable, if it meant the difference between passage or nonpassage of a bill this year, we would be strongly in favor of acting and moving ahead with the bill. Incidentally, that is a recurrent theme in my testimony.

We are anxious to see improvements and strengthening of the bill in certain areas, but above all we feel it is important that there be action this year and would not want to press any amendment or change to the point of its being a deterrent to enactment.

Senator KEATING. I certainly hope for action this year, but I also am aware of the legislative process which is that if they are not put in this year, they won't be put in for years and years to come. That is just the way we operate here. And it is almost a sure prediction. So if they are important, I would think that a delay of 6 months in the passage of better legislation would not be so serious that we should not give that consideration.

Mr. PERKINS. Yes, Senator Keating. My only thought was if legislation had started in the House, and if it did not go through at this session at all and we had to start completely fresh——

Senator KEATING. That is true.

Mr. PERKINS. I think it would be easier to amend in a future year than to start the whole program again. But you are far more experienced than we.

Senator KEATING. Well, I certainly hope we can get action this year. I share your view in that.

Mr. PERKINS. A second section which was a part of the bar association recommendation, and it is closely related to gifts, is a section which we referred to as "Abuse of Office." This is essentially coercion by a Government official, however subtle, to induce private advantage for himself or his associates.

Now this is not well covered by departmental regulations and not covered at all by Executive Order No. 10939.

Like gifts, this area was deemed appropriate by the bar association committee for legislation. And again I have attached draft language for a section on "Abuse of Office," as exhibit B. But again I would add that this type of a prohibition is separable from the rest of the bill and could arguably await another year.

A third area not covered by H.R. 8140 is emphasis on administration and administrative remedies. Conflicts of interest is a day-to-day problem of employee conduct and personnel administration. Also, past emphasis on criminal law procedures makes enforcement clumsy and ineffective.

Now while it is not absolutely essential as a matter of law, as Mr. Katzenbach has pointed out, we believe the bill would be greatly strengthened adding a section placing squarely on the President and heads of departments and agencies the responsibility for issuing regulations not inconsistent with the statute; for the development of techniques for prevention of conflicts of interest, through internal information programs and reporting; and enforcement within the executive branch, including use of full range of disciplinary powers available to department and agency heads.

And we have attached recommended language as exhibit C. Now this exhibit C is a summarized and shortened version of the same administrative section which Senator Keating has introduced. We would welcome the full version Senator Keating has proposed as an amendment, and this abbreviated version was merely an attempt to make it shorter and perhaps easier to digest.

But the principle has been well stated here this morning by Senator Keating.

We think it is very important that criminal laws be supplemented, not derogated but supplemented, by active day-to-day enforcement within the executive branch in the same way that other employee misconduct is dealt with.

Now turning to amendments recommended by the Justice Department, we support most of these proposed changes. I think Congressman Lindsay has raised a red flag as to the effect of deleting the postemployment partner provision, and we will take one more look at that and submit a letter to you as to our conclusion in the light of the point he has raised about its being protection rather than a deterrent as far as partnerships are concerned.

We think the most important of the Justice Department recommendations is the proposed increase in the figure in the so-called clause (3) proviso of sections 203 and 205, where they recommend the increase from 15 days to 60 days. In fact, we would go further and recommend complete deletion of this clause (3) ban.

What that clause (3) does is to provide a bar to a special Government employee—this is sections 203 and 205—it is a ban against a special Government employee having anything to do with any matter in the department or agency in which he is employed.

Now one of the effects of this, for example, would be that a lawyer who is a member of, say, the National Advisory Council on Mental Health out in Bethesda would be unable to conduct any food and drug practice for the reason that both the National Advisory Council on Mental Health and the Food and Drug Administration are under the Department of Health, Education, and Welfare.

We think that the clause (3) ban is based on a fallacious assumption that an intermittent Government employee can effectively roam throughout a department or agency and obtain special treatment for himself in connection with matters wholly unrelated to the Government work he is doing.

But the fact is that special employees almost invariably have very specific assignments, such as attending meetings of an Advisory Committee, or working with a highly specialized task force.

And we do not feel that they do have, realistically speaking, the opportunity to roam around and seek special advantage any more than any Washington representative would have, and probably not so well.

However, the comments I have made are taken care of to a very large extent by the proposed increase from 15 to 60 days which has been recommended by the Justice Department in respect to this clause (3) ban.

Mr. Chairman, we also suggest adding a preamble to the bill, making a declaration of policy and purpose. Some statements from President Kennedy's April 27, 1961, special message were apt for this purpose. And in the bill which our committee drafted we had a preamble which pointed up the two policy considerations which I outlined at the outset.

Attached here to my testimony is exhibit D, which is suggested language for a preamble.

Mr. COLLINS. Pardon me, Mr. Perkins, wouldn't it be rather difficult to have a preamble in criminal statute?

Mr. PERKINS. I had not thought so. It did not seem to us there was any important reason or distinction from a criminal statute or any other statute in this respect.

Also, we would like to see, as recommended, that a provision be added which emphasized the administrative responsibility of the President and the heads of the Government branch agencies. So the two would perhaps go hand in hand, expanding the bill beyond a purely criminal one, and also introducing the preamble.

I will skip some of the highly technical recommendations for change which we have and move over to page 6 of my outline of testimony where we make the comment in reference to section 208.

On page 17 of the bill, in line 5, the words "business organization" appear. We believe that the word "business" should be eliminated because self-dealing in nonprofit corporations is a serious threat today.

In other words, the section 208, as it is in the bill now, pages 16 and 17, contains a ban comparable to the one in present 18 U.S.C. 434, pertaining to business organizations. And we feel that should be expanded to encompass nonprofit corporations as well.

Also, in connection with section 208 we believe that the grounds for use of the exemptive power in section 208 should be broadened. We recommended adding in line 20, after the word "employee" language as follows:

or that other circumstances exist (to be set forth in such written determination) which, in the opinion of such official, make the application of subsection (a) contrary to the national interest.

Now, the purpose of this broadening is this, that in order to find an exemption under 208 as now drawn there has to be a determination that the interest of the individual is not so substantial as to be deemed likely to affect the integrity of his services which the Government may expect from such officer or employee.

Now, we believe there are some situations in which it would be difficult to say that the interest is not substantial but where it is essential to have the exemption operate.

For example, suppose a Government consultant is an inventor who has a patent on a key element to an antimissile device, and let us further suppose there were no competing or even comparable device. His recommendations that the Government use such a device we will assume are ultimately accepted. An exemption from section 208 is needed, but it can probably not be said the inventor's interest is not substantial even if he waives all royalties.

Indeed, the inventor, under section 208, cannot even make the recommendation without obtaining an advance exemption. So in essence all we are recommending is that the standard of applicability of the exemption be broadened to go beyond just insubstantiality and include other circumstances which, in the opinion of the official making the determination, justify the use of the exemption in the national interest.

Now in connection with section 209, which is the section pertaining to compensation from outside sources, there has been, as Mr. Katzenbach testified, a very laudable improvement, or would be a laudable improvement, in the law, one which we recommended, if this section is enacted, permitting employees who come into Government from busi-

ness organizations or nonprofit organizations to continue to keep their retirement and similar security-oriented plans which benefited them outside of Government.

It is disastrous for an individual who has built up an interest in a retirement program to be forced to discontinue that for the years that he is in Government service. But there is one aspect of the change which appears in paragraph (b), starting on line 18, and on page 18, and running over to line 2 on page 19.

There is one aspect which we would like to call your attention to and that is under the wording in the House bill—

A Government employee could continue in a profit-sharing plan even as to profits of a company earned while he is in Government service.

Under Senator Keating's bill, as recommended by the bar association, there could not be participation in a profit-sharing plan as to profits of a corporation earned during the period of Government service. It is our thought that the opportunity to share in profits earned while in Government service arguably carries greater dangers even than the flat salary which is prohibited.

So we would suggest consideration be given to adding a proviso at the end of line 2, page 19, excluding profits earned while in Government service, or else adding a specific authorization for Presidential regulations in this area and then permitting the President to carve out such exceptions by regulation since there may be others as well.

As far as Senator Keating's statement this morning is concerned, we certainly, as I have indicated, applaud his desire to establish administrative procedures within the framework of this bill.

Since our committee did not tackle the problem of ex parte communications we prefer not to comment on that. We do believe he is thoroughly sound and correct in urging a study of conflict-of-interest problems for Members of Congress.

Our study specifically did not undertake that, and we believe it would be most appropriate that it be done through the machineries of the Congress itself.

And as I have indicated, on Senator Keating's fourth proposal, namely, for covering gifts, we do believe that should be done, but hope also that the bill can be enacted this year because certainly our experience, while a pleasant one, in connection with the advocacy of this bill, has been a long one. And we do think that the national interest would be served in having legislation enacted this year.

I would like to ask my colleagues, Mr. Horsky and Mr. Hoagland, if they wish to add any comments?

Mr. HORSKY. I think you have covered it very well.

Mr. HOAGLAND. I do not think so, thank you.

Mr. PERKINS. We could go into much more detail but feel this covers the main points, and a good deal has to be left, presumably, for executive session, and detailed technical work by whomever the committee wishes to designate.

Mr. HORSKY. Could I just add this, if it would be appropriate, that all of us are available at any time to help the committee with anything we can do by way of helping you prepare amendments or clarification—or clarify sections or anything of the sort. We will be glad to do it as we did in the House.

Senator HRUSKA (presiding). We may invite you back to one of our executive sessions for that purpose. I think we all agree with you that when we get into refinements in a bill which has already been passed by the House, like those which you suggest, it will take very close analysis and scrutiny. We may very likely be calling upon some of you for further consultation.

Senator Keating, have you any questions of the witness?

Senator KEATING. No. I do not think I have, Mr. Chairman.

I want to again express my gratitude to Mr. Perkins and to his associates for the assistance they have given us. However, I do not think at this point I need to ask any questions.

Senator HRUSKA. Thank you Mr. Perkins, and both of your associates, for appearing as you did today.

Mr. PERKINS. Thank you.

(Mr. Perkins complete statement is as follows:)

TESTIMONY OF ROSWELL B. PERKINS, CHAIRMAN, SPECIAL COMMITTEE ON THE FEDERAL CONFLICT OF INTEREST LAWS, THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK ¹

A. IMPORTANCE OF H.R. 8140

Recruitment in a cold war era.

Protection of the Government.

Area of Government activity has greatly expanded.

Forms of venality more subtle today.

B. HUGE INVESTMENT OF WORK IN H.R. 8140

Culmination of continuous effort and study inside and outside of Congress for about 5 years. A major goal of the administration.

Lateness of the hour in Congress.

Importance of getting a bill to conference as soon as possible.

C. PURPOSES AND KEY PROVISIONS

Purposes and reasons for the bill set forth on pages 2-7 of the House Report. No need to repeat in testimony.

Key provisions set forth on pages 8-17 of the House Report. Again, no need to repeat in testimony.

The bill would carry out most of the key recommendations of the Special Committee of the Association of the Bar of the City of New York.

D. AREAS COVERED BY H.R. 8140

(1) *Gifts*

Gifts with intent to influence an official act are squarely covered by the bribery sections.

Most departments and agencies have regulations concerning gifts. Also, Executive Order No. 10939 (May 9, 1961) bars gifts, but is applicable only to Presidential employees. A Presidential memorandum (February 9, 1962) bars gifts for advisers and consultants.

Bar Association Committee (in 1960) concluded that gifts should be barred by an overall statute, with regulatory power in President to carve out exceptions. See language, exhibit A.

The bill, if enacted, could easily be amended in a future year to add a gifts prohibition. Suggest not delaying enactment at this time to add a gifts provision.

¹ Accompanied by Charles A. Horsky and Alexander C. Hoagland, Jr., members of the special committee. Not every member of the committee has been polled on each position taken in the testimony.

(2) Abuse of office

This is coercion by a Government official, however subtle, to induce private advantage for himself or his associates.

Not covered well by departmental regulations and not covered at all by Executive Order 10939.

Like gifts, this area was deemed appropriate (by the bar association committee) for legislation. See language, exhibit B. But this prohibition is severable from the rest of the bill and could await another year.

(3) Emphasis on administration and administrative remedies

Conflicts of interest is a day-to-day problem of employee conduct and personnel administration. Also, past emphasis on criminal law procedures makes enforcement clumsy and ineffective.

While not essential as a matter of law, we believe the bill would be strengthened by adding a section placing squarely on the President and heads of departments and agencies the responsibility for—

(a) issuing regulations not inconsistent with the statute ;

(b) development of techniques for prevention of conflicts of interest, through internal information programs and reporting ; and

(c) enforcement within the executive branch, including use of full range of disciplinary powers available to department and agency heads.

See recommended language, exhibit C.

E. OTHER SUGGESTED AMENDMENTS TO H.R. 8140

(1) Justice Department's proposed amendments

We support these proposed changes.

Most important of these is the proposed increase in the figure in the "clause (3)" proviso of sections 203 and 205, from 15 to 60 days. We would go further and recommend complete deletion of the "clause (3)" ban.

Clause (3) is based on a fallacious assumption, namely, that an intermittent Government employee can effectively "roam" throughout a department or agency and obtain special treatment for himself in connection with matters wholly unrelated to the Government work he is doing.

The fact is that intermittent employees almost invariably have very specific assignments, such as attending meetings of an advisory committee, or working with a highly specialized task force. They cannot seek out a supply officer, for example, with any greater degree of ease or effectiveness than any sales representative based in Washington—in fact, probably not nearly so well.

However, confining "clause (3)" to employees of over 60 days would remove most of the problem.

(2) Preamble

Suggest adding a preamble, making a declaration of policy and purpose. See statements in President Kennedy's April 27, 1961, special message, and draft language, exhibit D.

(3) Section 202

(a) Legislative history should make it clear that advisers and consultants are Government employees on days when not performing service. Thus, the distinction drawn in the Attorney General's January 31, 1962, opinion to the President would be superseded.

(b) Similarly, an amendment or legislative history should make it clear that any persons appointed to a position, no matter how infrequent the services and whether unpaid, are "employees." (Note there is no definition of Government "employee.")

(4) Section 203

(a) Services before courts should be covered, except in the case of Members of Congress.

(b) Sections 203 and 205 should be merged, as they are 90 percent coextensive.²

(c) The word "knowingly" in line 16 on page 9 should probably be eliminated. It does not appear in a comparable provision in section 209.

² Since this would require substantial redrafting, time considerations may make it desirable to leave these two sections separate for the time being.

(5) *Section 207*

(a) The word "knowingly" in line 8 on page 14 should be eliminated.

(b) There are two different phrases as to end of employment:

Page 14, line 20: "after his last employment has ceased."

Page 15, line 13: "following the termination of the latter's employment by the Government."

These two phrases should be made consistent.

(c) A provision should be added to the effect that a special Government employee's employment shall, in the absence of a term appointment or other understanding be deemed to have terminated on the last day on which he actually performed services.

(d) Paragraph (c), if not eliminated as recommended by Justice, should be amended to cover the possibility of return to Government of a former Government employee. This could be done by using in lines 13 and 14 the phrase "following the termination of the latter's employment during which the personal participation occurred."

(e) The paragraph (d) ban applicable to partners of Government employees should not be a lifetime ban, except where the Government employee remains continuously with the same department or agency. If the employee switches his department or agency, or leaves Government (perhaps returning a few years later) the paragraph (d) limitation should end as to matters worked on in the former department or agency.

Accordingly, paragraph (d) should be amended to incorporate a time limit on its applicability: the termination of the employment of the Government employee by the department or agency by which he was employed when the participation occurred.

Alternatively, the partner ban could be made to apply for a year or two following the termination of the employment with the particular department or agency.

(6) *Section 208*

(a) The word "business" in line 5 on page 17 should be eliminated. Self-dealing in nonprofit corporations is a serious threat today.

(b) The grounds for use of the exemptive power in section 208(b) should be broadened. Recommend adding in line 20, after "employee," "or that other circumstances exist (to be set forth in such written determination) which, in the opinion of such official, make the application of subsection (a) contrary to the national interest."

Example.—A Government consultant is an inventor who has the patent on a key element to an antimissile device. There are no competing or even comparable devices. His recommendations that the Government use such a device are ultimately accepted. An exemption from section 208 is needed, but it probably cannot be said that the inventor's interest is not substantial, even if he waives royalties. Indeed, the inventor cannot even make the recommendation without an advance exemption.

(7) *Section 209*

Arguably, a Government employee should not be allowed to participate in a profit-sharing plan to the extent of sums contingent on profits earned during the period of his Government employment. This might carry greater dangers than a flat salary supplementation while in Government. Consideration should be given to adding a proviso at the end of line 2 on page 19 as to such profits, or else adding a specific authorization to the President to issue protective regulations.

EXHIBIT A

SUGGESTED LANGUAGE FOR SECTION ON GIFTS

Sec. —. GIFTS

(a) No Government officer or employee shall receive, accept, take, seek, or solicit, directly or indirectly, anything of economic value as a gift, gratuity, or favor from any person if such officer or employee has reason to believe the donor would not give the gift, gratuity, or favor but for such officer's or employee's position within the Government.

(b) No Government officer or employee shall receive, accept, take, seek, or solicit, directly or indirectly, anything of economic value as a gift, gratuity, or

favor from any person, or from any officer or director of such person, if such officer or employee has reason to believe such person—

(1) has or is seeking to obtain contractual or other business or financial relationships with the agency of such officer or employee; or

(2) conducts operations or activities which are regulated by such agency;
or

(3) has interests which may be substantially affected by such officer's or employee's performance or nonperformance of official duty;

Provided, however, That this paragraph (b) shall not apply to gifts to a special Government employee by his own employer.

(c) Exceptions to subsections (a) and (b) may be made by regulations issued by the President or the head of an agency in situations where the circumstances do not lead to the inference that the official judgment or action of the officer or employee receiving, directly or indirectly, the gift, gratuity, or favor was intended to be influenced thereby.

EXHIBIT B

SUGGESTED LANGUAGE FOR SECTION ON ABUSE OF OFFICE

Sec. —. ABUSE OF OFFICE

Except in the course of his official duties or incident thereto, no Government officer or employee shall, in his relationships with any person specified in the succeeding sentence, use the power or authority of his office or position within the Government in a manner intended to induce or coerce such other person to provide such officer or employee or any other person with anything of economic value, directly or indirectly. This section shall apply to relationships with any person, or any officer or director of such person, from whom such Government officer or employee (including a special Government employee) would be prohibited by the provisions of section — (b)¹ from receiving a gift.

EXHIBIT C

SUGGESTED LANGUAGE FOR SECTION ON ADMINISTRATION

Sec. —. ADMINISTRATION

(a) The President and agency heads shall issue such regulations consistent with the provisions of this Act as may be necessary or appropriate to carry out the policies and purposes of this Act.

(b) In addition to enforcement by criminal procedures, and as a supplement thereto but not in derogation thereof, each agency head shall be responsible for the administration and enforcement within his agency of this Act and the regulations issued hereunder in accordance with established disciplinary procedures. The agency head may dismiss, suspend or take such other action as may be appropriate in the circumstances in respect of any officer or employee of his agency upon finding that such officer or employee has violated this Act or regulations promulgated hereunder. The procedures for any such action shall correspond to those applicable for disciplinary action for employee misconduct generally, and any such action shall be subject to judicial review to the extent provided by law for disciplinary action for misconduct of employees of the same category and grade.

(c) Agency heads may establish by regulation procedures for the purpose of preventing violations of this Act and the regulations issued hereunder, including, but not limited to, reasonable requirements as to the periodic filing of appropriate statements, reports and certifications by officers and employees of the agency and by persons appearing before or dealing with the agency.

¹ Insert appropriate number for section dealing with gifts. See exhibit A.

EXHIBIT D

SUGGESTED LANGUAGE FOR PREAMBLE

PREAMBLE ; DECLARATION OF POLICY AND PURPOSE

(a) The proper operation of a democratic government requires that officials be independent and impartial; that government decisions and policy be made in the proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. The attainment of one or more of these ends is impaired whenever there exists, or appears to exist, an actual or potential conflict between the private interests of a government employee and his duties as an official. The public interest, therefore, requires that the law protect against such conflicts of interest and establish appropriate ethical standards with respect to employee conduct in situations where actual or potential conflicts exist.

(b) It is also fundamental to the effectiveness of democratic government that, to the maximum extent possible, the most qualified individuals in the society serve its government. Accordingly, legal protections against conflicts of interest must be so designed as not unnecessarily or unreasonably to impede the recruitment and retention by the Government of those men and women who are most qualified to serve it. An essential principle underlying the staffing of our governmental structure is that its employees should not be denied the opportunity, available to all other citizens, to acquire and retain private economic and other interests, except where actual or potential conflicts with the responsibility of such employees to the public cannot be avoided.

(c) It is the policy and purpose of this Act to promote and balance the dual objectives of protecting Government integrity and of facilitating the recruitment and retention of the personnel needed by Government, by prescribing essential restrictions against conflicts of interest in the executive branch of the Government without creating unnecessary barriers to public service.

Senator HRUSKA. Off the record.

(Discussion off the record.)

Senator HRUSKA. Gentlemen, I am told that there is a live quorum. The committee will stand in recess and will seek permission to sit this afternoon.

(Whereupon, at 12:30 p.m., the hearing was recessed, to reconvene at 2 p.m., on the same day.)

AFTERNOON SESSION

Senator KEATING (presiding). The subcommittee will come to order.

We will first hear Mr. Raoul Berger, chairman of the section on administrative law of the American Bar Association.

Mr. Berger, we welcome you here. And we would like to have the benefit of your views.

**STATEMENT OF RAOUL BERGER, ESQ., CHAIRMAN, SECTION OF
ADMINISTRATIVE LAW, AMERICAN BAR ASSOCIATION**

Mr. BERGER. I am authorized to appear on behalf of the American Bar Association, and I want to thank you for the privilege of appearing before you.

I had originally prepared a brief statement, but when I heard the testimony this morning I thought it would be better if I would try to extemporize it.

Senator KEATING. We will be very glad, if you have a prepared statement, to put it in in full at the close of your testimony.

Mr. BERGER. It is not important enough. I believe I can convey to you orally what I had in mind.

First, may I congratulate the committee for coming to grips with this sprawling, antiquated mass of statutes which are sadly in need of overhauling. They reach too far, as you know, in some cases, and they don't reach far enough in others.

Now, the association preferred the Senate bill 1902 to H.R. 8140. And this preference was based on two grounds. The first ground resembles an amendment you proffered this morning to S. 1902, Senator Keating, providing for administrative machinery.

You spoke of enforcement machinery. We considered that conflicts of interest are better handled through administrative clearance machinery such as that used by the Treasury Department, and recently adopted by the Atomic Energy Commission. We consider that this is better than resort to criminal prosecution, which is sometimes much too harsh, and always cumbersome and subject to the infirmities you mentioned. And we would strongly advocate, Senator, that greater emphasis be given to administrative clearance machinery. The problem is twofold: one, governmental relations of men presently in the Government; two, finding an expedient and sensible way of dealing with ex-Government employees who aren't quite sure whether they are entitled to appear or not before any court or agency, for which process administrative machinery such as advisory opinions is far better suited.

Now, a second reason why we preferred S. 1902 was tangentially stated by Mr. Perkins this morning. S. 1902 has an excellent statement of principles in the preamble. And whenever there are doubts as to the meaning of a complicated statute, it has been our experience that you profit from having a comprehensive statement of principles to look to for guidance. So we would suggest to you, Mr. Chairman, that criminal statute or not—and if you follow your own thought and our recommendation, it should be a mixed criminal statute and administrative clearance statute—you would benefit from having a compact statement of principles patterned after that in S. 1902.

Now, we agree with Mr. Katzenbach in recommending the elimination of section 207(b) of H.R. 8140, which would completely bar a former Government employee for 2 years after termination of his employment from appearing before any court or agency in a manner “which was under his official responsibility” during his employment. And we agree with the Department of Justice that this subsection—would unfairly impair the private employment opportunities of many non-career Government officials who may have had responsibility for a broad area of Government operation, but no personal or substantial participation in a vast number of particular matters for which they were ultimately responsible.

As you know, Mr. Chairman, in many agencies the top officials or those close to the top have a perfect flood of papers that float in front of them, so that they have to sign merely in reliance on an OK by some subordinate. Some documents that they don't even see are signed by subordinates. And this sort of official responsibility is simply too large for the net to catch.

We concur with the Department of Justice that section 207(a) provides adequate protection for the Government, since it embodies the rule of ethics expressed in canon 36 of the Canons of Professional Ethics, the rule against switching sides—this has worked for generations in the law, and we think it would work equally well in Government.

One may be "officially responsible" as a high official in an official matter and yet in fact have no contact with it whatever. To elect to bar such an individual from later representation of private persons in such circumstances is to ignore realities.

We disagree, however, with Mr. Katzenbach in recommending the elimination of section 207(c), the partner section. And I presume he would have the same thing to say about section 207(d). This matter was canvassed before the board of governors of the ABA and the suggestion that 207(c) be deleted was rejected.

Congressman Lindsay this morning justly urged that section 207(c) be retained. A partner of a former employee of the Government should not for 2 years at least—and that is what is provided—be permitted to do what the former employee is prohibited from doing. To permit the partner to do it is to encourage behind-the-scenes evasion of the prohibition. It is something that would be unseemly for any lawyer.

We recommend also that the classification of Government employees for conflict-of-interest purposes should be based solely on their status as full-time or part-time employees, and not on any other basis. And we recommend that all existing exemptions to the present conflict-of-interest statute should be repealed, for, as the President said on April 27 of 1961, the resulting hodgepodge of exemptions seriously weakens the integrity of the Government personnel system.

We should also like to recommend to you the inclusion within H.R. 8140 of National-State committeemen and officers of a political party. Without mentioning names, you will recall, Senator, from time to time very high officers of the parties have been found in positions that were embarrassing, to say the least. The national chairman of a party is in a position to exert great influence, and he too should be removed from temptation and placed beyond suspicion.

Senator KEATING. Would you extend that to all the members of the national committees of both parties?

Mr. BERGER. Well, I would be tempted to do so.

Senator KEATING. Would you extend it to the State chairmen in the various States?

Mr. BERGER. I believe we had a resolution that dealt with the question some 7 or 8 years ago at the time when the thing was raised. And I believe we felt that it should be the State committeemen too, the members of the National Committee. How far down to go, Mr. Chairman, is a matter of judgment, and you would be far wiser than we. But it has been a real problem in the past, and we raise it now, because this is a comprehensive revision, and we were deficient in coverage in this area, and this would be the right time to do it.

Now, may I add finally, the Section on Taxation of the American Bar Association expects to submit some technical advice respecting H.R. 8140 which the staff will doubtless wish to consider.

(This memorandum has been received and made a part of the committee files.)

Mr. BERGER. While we preferred S. 1902 for the reasons I have given you, we would be happy to endorse H.R. 8140 if you could make the changes that you have suggested and that I have enumerated, the changes that were suggested by Mr. Katzenbach, by Mr. Perkins, and by Congressman Lindsay.

I want to thank you very much for the privilege of appearing before you.

Senator KEATING. Thank you, Mr. Berger. You have been very helpful.

Mr. BERGER. If you have any questions I will be glad to answer them.

Senator KEATING. Counsel?

Mr. COLLINS. You are speaking for the ABA, Mr. Berger?

Mr. BERGER. I have been authorized to come here on behalf of the ABA.

Mr. COLLINS. If the committee does take action on H.R. 8140 with or without the amendments that have been suggested, the ABA is for H.R. 8140 in principle?

Mr. BERGER. Let me phrase it a little differently. We would wholeheartedly endorse H.R. 8140 with the changes with I have enumerated. And I don't think that the ABA would oppose H.R. 8140 in any event. We are disturbed, now that the time has come for a wholesale revision, about having to continue to deal with this matter exclusively within the criminal framework. We think, Senator—we didn't know that you independently were taking that view—but we canvassed it very seriously and patiently, and we feel it is a mistake to put this almost exclusive emphasis on criminal processes. I know from my own law experience in Government that that is not the way to do it.

I know that with these changes we would wholeheartedly jump on the band wagon of H.R. 8140. As it now is, oh, we won't be opposed to it, let's put it that way.

Mr. COLLINS. Then, in the framework of the various amendments that have been suggested—

Mr. BERGER. In that framework we would want to get behind you with whatever help we can give you through our various journals of publicity, and whatever we can do, I am sure we would be glad to do.

Mr. COLLINS. Thank you very much, Mr. Berger.

Senator KEATING. I agree with you that the most important amendment that I have suggested is the one to provide for an administrative procedure, as the President indicated he felt was desirable in April. I do not agree with the statement that it is covered by present law, I think that it is necessary to broaden the present provision of law somewhat to give the authority to proceed administratively.

And I hope very much that the committee will see fit to adopt at least that.

Mr. BERGER. I would add, even if the suggestion that it is presently covered has more merit than you attribute to it, that this is an occasion to clear up any obscurity, any problems about it.

I may say, Mr. Collins, while we suggest incorporation of a statement of principles, this is something that we don't attach quite as much weight to as administrative clearance machinery, which seems to us of the highest importance. And I think it would be unjust to preserve 207(b) with its vast "official responsibility," because many of the finest men that you have to draw into the Government never have personal contacts with problems over which they have official responsibility, and it is utterly unfair and unjust to them, and impairs recruitment of the ablest men.

Thank you.

Senator KEATING. Thank you, Mr. Berger.

Admiral Houser of the Retired Officers Association.

Admiral, we are glad to welcome you here.

STATEMENT OF ADM. HAROLD A. HOUSER (RETIRED), RETIRED OFFICERS ASSOCIATION, WASHINGTON, D.C.

Admiral HOUSER. Mr. Chairman, I have a prepared statement, which I believe you have a copy of, sir.

Senator KEATING. You are free to handle it any way you want to. You may read your statement, or it will be made a part of the record, and you may summarize it and proceed in whatever fashion you wish.

Admiral HOUSER. With your kind permission, I should like to read it; it is only seven pages long.

I am Rear Adm. Harold A. Houser, U.S. Navy, retired, legislative counsel of the Retired Officers Association, with headquarters in this city.

The association consists of over 50,000 members, representing retired officers of all of the seven uniformed services, including both Regulars and Reserves. The association is grateful for the opportunity to present its views on the important and involved matter of the conflict of interest statutes.

In connection with the need for a revision of such statutes, the attention of the committee is, respectfully, invited to a recent publication of the Navy Department (NAVEXOS P-1778 (9-57)), entitled "Reference Guide to Employment Activities of Retired Naval Personnel." In analyzing the conflict of interest statutes this publication, on page 18, states, in part, as follows:

Of all the laws mentioned in this pamphlet, these criminal statutes are the most ambiguous and it is often extremely difficult to predict with any degree of certainty whether proposed activities will violate these provisions.

In view of this situation, the association wishes to compliment the committee on scheduling hearings on the bill, H.R. 8140. It is our opinion that—with an amendment which we will suggest—enactment of the bill, H.R. 8140, would clarify and improve the laws designed to prevent conflict of interest by Federal employees and former employees, including retired officers of the uniformed services.

In the discussion on the floor of the House of Representatives, during the consideration of the above bill, the distinguished chairman of the House Judiciary Committee, in presenting the bill, stated, in part, as follows:

The bill makes no change whatever in existing law affecting retired officers of the Armed Forces (p. 13741, Congressional Record, Aug. 7, 1961.)

The bill specifically deals with retired officers in two places. The first of these is in section 206, which reads as follows:

SEC. 206. EXEMPTION OF RETIRED OFFICERS OF THE ARMED FORCES.

Sections 203 and 205 of this title shall not apply to a retired officer of the Armed Forces of the United States while not on active duty and not otherwise an officer or employee of the United States, or to any person specially excepted by Act of Congress.

The above section would, if allowed to become operative, accomplish one of the basic objectives of the Retired Officers Association. However, we find that the above provision in the bill is completely nullified in section 2, which states :

Sections 281 and 283 (except as they may apply to retired officers of the Armed Forces of the United States) * * * are repealed and will respectively be supplanted by sections 203 and 205. * * *.

The Retired Officers Association recommends that the bill be amended by deleting the underscored words in section 2, quoted above, for reasons which we will present in justification therefor.

Retired officers of the Regular service, along with other citizens, are subject to all the criminal statutes which provide penalties for wrongdoing in dealing with the Government. In addition, however, unless our suggested amendment is adopted, they will continue to be subjected to a prohibition against dealing with the Government, irrespective of whether or not those dealings are proper or in violation of the criminal code. In other words, they would continue to be subjected to a specific restriction not applicable to others.

This restriction is found in section 281 of the Criminal Code which prohibits, among other things, retired officers of the Regular military services from making sales to the Department under which they hold retired status, under penalty of \$10,000 fine or 2 years in prison, or both. Unless the association's amendment is incorporated in the bill, such officers will continue to be singled out for discriminatory treatment. In this connection it is submitted that sales to the Government are not *malum in se*. On the contrary, sales to the Government, contracts with the Government, negotiations concerning contracts with the Government are, as a general rule, in the best interest of all concerned. Actually, when done in accordance with approved standards and in compliance with the laws concerning these activities, they are essential activities, especially necessary at this time with the billions of dollars in contracts for defense made necessary by the world situation.

It is believed that the situation which our proposed amendment would modify was brought about, at least in part, as a result of the lack of a complete appreciation of the status occupied by a Regular retired officer of the uniformed services. He does not, of course, exercise any authority by virtue of his status as a retired officer (unless recalled to active duty as is the case in a national emergency.)

House Report No. 2330, 76th Congress (pp. 2-4), has this to say on the point in question :

Though a part of the Military Establishment, retired (Regular) officers not on active duty—the only class to which this bill applies—are more nearly in a civil than a military status. They have no military duties to perform, and though in time of war they may be called to duty without their consent, this is a contingency to which every citizen is subject. In time of peace their status is no different from that of citizens, generally, and, as said by the court of appeals, their “activities are wholly separated from official life.” It is absurd, therefore, to think that retired officers, particularly while not on active duty, as such, can exert any undue influence in the departments or bureaus, * * *.

Chairman Vinson of the House Armed Services Committee, in 1959, designated a subcommittee to study the overall question of the employment of retired officers. The subcommittee made an exhaustive study in this field. During the course of the debate on the bill result-

ing from this study (April 6, 1960), Congressman Vinson made an observation pertinent to the statement contained in the House report referred to above, relative to the possibility of any undue influence being exerted by retired officers (Congressional Record No. 63, p. 6947, 1960). On this occasion, he stated, in part, as follows :

The subcommittee, after inviting every Member of the House to testify, and after hearing the testimony of Members and others, did not disclose a single instance in which an officer, retired from the military service, had exercised influence on someone in Government to the extent that the product manufactured by his company was selected.

No evidence of improper use of influence was disclosed.

It is desired to point out that there do not exist any restrictions in the criminal code prohibiting business activities of Reserve officers of the uniformed services.

This is because the Armed Services Reserve Act of 1952, and former laws, specifically provide that no Reserve officer of any of the Reserve components will, by reason of his status as such, when not on active duty, be restricted from any business activity or employment to which he would otherwise be eligible. These statutes have, very properly, been enacted to protect the rights of retired Reserve officers to be employed both by the Federal Government and in private business activities against loss of such rights to which they are otherwise entitled as citizens of the United States.

Why retired officers of the Regular services have, over the years, been singled out for the imposition of restrictions upon their business opportunities is not clear. Why it should be imputed to them that they as a class might be expected to engage in overreaching activities in their dealings with the military personnel with whom they formerly served on active duty and, at the same time, other classes of Government employees, including civilian and military personnel in the Reserve components, would be aloof from any such activities is, likewise, not clear.

The association is convinced that the proposed new sections of the criminal code relating to postemployment of former officers and employees would be adequate to cover the conduct of all former active personnel of the Government, including retired officers of the Regular military services. There appears to be no occasion to have special restrictive laws applicable, solely, to retired officers of the Regular uniformed services.

The association feels that to deny our defense industries the talents and experience of retired officers of the Regular military services in connection with the manufacture, production, and use of the modern weapons and devices needed in our national defense effort, especially at this time, is not in the national interests. To permit their employment and circumscribe their opportunity to discuss these matters with those with whom they have formerly served renders them, to that extent, ineffective.

The effect of the amendment we propose would be to remove unnecessary restrictions and make the services of all former active personnel of our Government, civilian and military, fully available to the end that every citizen can make his contribution to the preservation of our institutions. This is entirely aside from the injustice of imposing restrictions upon honorable people who wish to make such

contributions and to limit, unnecessarily, their legitimate opportunities according to their talents and experience to provide for their families after retirement. The detrimental morale factor, alone, upon those who devote themselves to professional military careers, which include much in the way of personal sacrifice should, in the opinion of the association, be one of the matters of deepest concern to the committee and every Member of Congress—and we are confident it will.

Enactment of the bill, H.R. 8140, amended as suggested; namely, by deleting in section 2 “(except as they may apply to retired officers of the Armed Forces of the United States)”, would bring retired officers of the military services into conformity with other Federal retirees with respect to the activities in which they may properly engage. It will, thus, render such officers no more subject to the laws involved than are all other classes of Federal retired personnel and former Federal employees, including Federal civil service annuitants, former Foreign Service personnel, and retired officers of the Reserve components of the military services. The enactment of the pending legislation will, however, apply equally to retired officers of the Regular services and require of them the same high measure of integrity and responsibility in their dealings with the Federal Government which must be expected and required of all citizens and other persons in the United States, a quality of character which our career military officers possess to a very high degree.

The Retired Officers Association understands that a statement will be presented to the committee on behalf of the Commissioned Officers Association of the Public Health Service and the Association of Commissioned Officers of the Coast and Geodetic Survey, with reference to a change in the phraseology of proposed new section 206 of title 18 of the code, which appears beginning at line 20 of page 13 of the bill. Those associations will recommend that the term, “armed services,” appearing on line 20, page 13 of the bill and also in the text under said section 206 on line 22 of the bill, be changed to the term, “uniformed services,” so that the application of the exemption contained in the proposed section will apply uniformly to all members of the uniformed services (Army, Navy, Air Force, Marine Corps, Coast Guard, Public Health Service, and Coast and Geodetic Survey). The Retired Officers Association concurs in this proposed amendment.

The association urges enactment of the bill, H.R. 8140, including the amendment previously suggested.

Senator KEATING. The phrase “uniformed services” is a word of art taken to mean the ones designated in your statement?

Admiral HOUSER. Mr. Chairman, what it really does is to add the Public Health Service and the Coast and Geodetic Service, that is the only change.

Senator KEATING. Thank you very much, Admiral, we appreciate the benefits of your views.

Admiral HOUSER. Thank you, Mr. Chairman.

Senator KEATING. We will hear F. O. Willenbacher, Commissioned Officers Association of the Public Health Service, and Association of Commissioned Officers of the Coast and Geodetic Survey.

STATEMENT OF FRANZ O. WILLENBUCHER, CAPTAIN, U.S. NAVY (RETIRED), NATIONAL COUNSEL OF THE COMMISSIONED OFFICERS ASSOCIATION, PUBLIC HEALTH SERVICE, AND THE ASSOCIATION OF COMMISSIONED OFFICERS, COAST AND GEODETIC SURVEY

Captain WILLENBUCHER. Mr. Chairman, I should like to read my statement, so I can keep strictly to what I have to say.

My name is Franz O. Willenbucher, captain, U.S. Navy, retired, national counsel of the Commissioned Officers Association, Public Health Service, and the Association of Commissioned Officers, Coast and Geodetic Survey, hereinafter called "the associations."

The Commissioned Officers Association, Public Health Service, consists of approximately 3,000 members, which number includes more than 75 percent of the career active duty personnel of that service, and the Association of Commissioned Officers, Coast and Geodetic Survey, consists of practically all of the career active duty personnel of that service. These organizations are pleased to have the opportunity to appear before the committee to present their views on the bill (H.R. 8140) to strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes.

The associations desire strongly to urge upon the committee two changes in this proposed legislation. The first has reference to proposed new section 206 of title 18 of the United States Code, contained in section 1 of the bill, beginning at line 21 of page 13.

Proposed new section 206 is quoted as follows:

§ 206. EXEMPTION OF RETIRED OFFICERS OF THE ARMED FORCES

Sections 203 and 205 of this title shall not apply to a retired officer of the *Armed Forces* of the United States while not on active duty and not otherwise an officer or employee of the United States, or to any person specially excepted by Act of Congress. [Emphasis supplied.]

This proposed new section of title 18 of the United States Code would, if enacted as now contained in the bill, exempt retired officers of the Armed Forces from the effect of the proposed new sections 203 and 205 of title 18.

Included with the Armed Forces (Army, Navy, Air Force, Marine Corps, and Coast Guard) in much legislation are the Public Health Service and the Coast and Geodetic Survey. All seven of these services constitute the uniformed services. If the language now included in the bill were enacted, it would, presumably, leave retired officers of the Public Health Service and the Coast and Geodetic Survey subject to the provisions of proposed new sections 203 and 205, since these two services are not now included within the term "Armed Forces."

In view of this, and because it is manifestly apparent that it is not intended to include retired officers of the Public Health Service and the Coast and Geodetic Survey within the restrictions contained in the proposed two new sections of the code to any greater extent than those in the "Armed Forces," it is strongly urged that the term "Armed Forces," contained in the title of proposed section 206 on line 20 of page 13 of the bill and in the text under that title on line 22 of page 13 of the bill, be changed to read "uniformed services."

The words "uniformed services" are words of art in various laws which deal with these services, as including all seven of the uniformed services. The inclusion of this term in the two places indicated would place all seven of the uniformed services on the same basis of exemption intended to be accomplished by the provision in question with reference to retired officers in general.

The second change which the associations desire strongly to urge upon the committee is the removal of the parenthetical matter contained in lines 22, 23, and 24 of page 20 of the bill; namely, "(except as they may apply to retired officers of the Armed Forces of the United States)."

The associations are aware that the same recommendation is being made to this committee by the Retired Officers Association. They desire to state that they endorse the reasons set forth in the statement present on behalf of the Retired Officers Association and fully support its recommendation in this matter.

The bill before the committee deals, in part, with legislation to codify and redefine limitations upon the opportunity of various types of former employees of the Federal Government to act as counsel, attorney or agent (other than for the United States or any department or agency thereof) in relation to any proceeding or other matter before the agency in which he held office or was employed or assigned to duty, or in relation to any proceeding to which such agency, or any officer or employee of such agency by reason of his office or employment, or the United States on behalf of such agency, is a party.

The associations recognize the necessity for reasonable restrictions upon the activities of persons who serve or have served in the Government with respect to the representation of others in matters connected with their former office or employment, such as is now proposed in this bill.

In our laws, where the term "officer of the Government" or a similar term is used, such terms include retired officers of the Regular military services, in inactive status, since they have been, administratively and judicially, held to be "officers of the Government" within the meaning of such terms.

One administrative decision in which it was held that retired officers remain officers of the Government is found (in 29 Op. Atty. Gen. 397 (1912)) where it was held that an officer of the U.S. Army or Marine Corps, retired from active service only, and not wholly retired from service, is an officer in the employ of the Government, and so within the prohibition of what is now section 281 of title 18 of the code.

A judicial determination that a retired officer remains an officer of the Government was the case of *Morgenthau v. Barrett*, in the Court of Appeals, District of Columbia in 1939, reported (in 108 F. 2d 481), where it was held that a retired Army officer could be denied admittance to practice as attorney before the Treasury Department as an "officer in the employ of the United States" under what is now section 281 of title 18 of the code.

If the parenthetical matter contained in lines 22, 23, and 24 of page 20 of the bill, the removal of which is recommended, is kept in this legislation and enacted, the effect would be that retired officers of the regular services of the Armed Forces of the United States would be the only class of Federal employees prohibited, under the restrictions

contained in present section 281 of the Criminal Code, for the rest of their lives after retirement, from engaging in sales to the department under which they hold retired inactive status. No other retired person, military or civilian, is now, or will be when this legislation is enacted, subject to those restrictions. All retired persons will, if the pending legislation is enacted, be subject to the provisions contained therein, if they come within the jurisdictional definitions of the proposed new sections of the Criminal Code contained in the pending legislation. This would be true of retired officers of the Regular uniformed services. In other words, the parenthetical matter, if kept in the legislation, would create discriminations against retired officers of the Armed Forces, not in active service, as a class, as compared to all other retired Federal personnel, civilian and military.

The pertinent language, contained in the second paragraph of section 281 of title 18 of the United States Code, is quoted as follows:

Retired officers of the Armed Forces of the United States, while not on active duty, shall not, by reason of their status as such, be subject to the provisions of this section. Nothing herein shall be construed to allow any retired officer to represent any person in the sale of anything to the Government through the department in whose service he holds a retired status.

Under this provision, at the present time, retired officers of the regular services of the Armed Forces of the United States, even though not in active service, may not now engage in sales to the Government through the department under which they hold retired status. They are thus barred for the rest of their lives from what all others are entitled to do.

This is not true of retired officers of the Reserve components of the Armed Forces, for, under section 30r(d) of title 5 of the United States Code, it is stated as follows:

(d) When he is not on active duty, or when he is on active duty for training, a Reserve is not considered to be an officer or employee of the United States or a person holding an office of trust or profit or discharging any official function under, or in connection with, the United States because of his appointment, oath, or status, or any duties or functions performed or pay or allowances received in that capacity (Aug. 10, 1956, ch. 1041, sec. 29, 70A Stat. 632, amended Sept. 2, 1958, Public Law 85-861, sec. 13, 72 Stat. 1557; June 30, 1960, Public Law 86-559, sec. 7, 74 Stat. 282; Oct. 4, 1961, Public Law 87-378, sec. 7(a), 75 Stat. 809).

Prior statutes to the same effect, since repealed, include the act of May 12, 1917 (ch. 12, 40 Stat. 72, amended July 1, 1947, ch. 192, sec. 1(b), 61 Stat. 238); act of June 25, 1938 (ch. 690, sec. 4, 52 Stat. 1176); act of July 9, 1952 (ch. 608, pt. VIII, sec. 804(a), 66 Stat. 506).

The purpose of the second paragraph of section 281 of title 18 of the code, quoted above, was stated (in H. Rept. No. 2330, 76th Cong., 3d sess., pp. 2-4 (1940)), as follows:

The only effect of this bill will be to extend to retired officers not on active duty the same exemptions from the operations of section 113 (Criminal Code of 1909; now 18 U.S.C. 281) as were extended to Reserve officers by the act of July 1, 1930 (46 Stat. 841) (now 70A Stat. 632; 5 U.S.C. 304 (d)). * * *

* * * * *

Though a part of the Military Establishment, retired officers not on active duty—the only class to which this bill applies—are more nearly in a civil than a military status. They have no military duties to perform, and though in time of war they may be called to duty without their consent, this is a contingency to which every citizen is subject. In time of peace their status is no different from that of citizens, generally, and, as said by the court of appeals, their “activities

are wholly separated from official life." It is absurd, therefore, to think that retired officers, particularly while not on active duty, as such, can exert any undue influence in the departments or bureaus, * * *.

Thus, it appears that the 1940 amendment had for its purpose extension to retired officers of the regular services of the Armed Forces, when not in active service, certain exemptions from the restrictions contained in section 281 of title 18 of the code, to which retired officers of the Reserve components of the Armed Forces were then entitled. As outlined above, due to additional laws subsequently enacted, which had the effect of entirely removing retired officers of the Reserve components of the Armed Forces from the restrictions contained in this law, the same situation now exists which existed in 1940: namely, that retired officers of the Regular services of the Armed Forces are still subject to restrictions which, since the 1940 amendment, have not been applicable to their counterparts in the Reserve components of the Armed Forces—restrictions which in no way apply to any other group of Federal retired personnel, civilian or military, when not actively engaged in employment by or service to the Federal Government.

There is a very important additional consideration. Retired officers of the regular uniformed services are, during the 2 years next after their retirement, prohibited from receiving their retired pay, if during that period they are engaged in the selling of or contracting for the sale of or negotiating for sale of to any agency of the Department of Defense, the Coast Guard, the Coast and Geodetic Survey, and the Public Health Service, any supplies or war materials. (The applicable statute is 67 Stat. 437; 5 U.S.C. (Supp. IV) 59c (1953)) :

No payment shall be made from appropriations in any act to any officer on the retired lists of the Regular Army, Regular Navy, Regular Marine Corps, Regular Air Force, Regular Coast Guard, Coast and Geodetic Survey, and Public Health Service for a period of 2 years after retirement who, for himself or for others, is engaged in the selling of or contracting for the sale of or negotiating for the sale of to any agency of the Department of Defense, the Coast Guard, the Coast and Geodetic Survey, and the Public Health Service any supplies or war materials.

Thus, there is a 2-year period, sometimes called a cooling-off period, involving the same restriction contained in section 281 of title 18 of the code. This would appear to be an adequate restriction properly to regulate the situation, assuming that any restriction in the wisdom of Congress is necessary.

The pertinent language, contained in the second paragraph of section 283 of title 18 of the United States Code, is quoted as follows:

Retired officers of the Armed Forces of the United States, while not on active duty, shall not, by reason of their status as such, be subject to the provisions of this section. Nothing herein shall be construed to allow any such retired officer, within 2 years next after his retirement, to act as agent or attorney for prosecuting or assisting in the prosecution of any claim against the United States involving the department in whose service he holds a retired status, or to allow any such retired officer to act as agent or attorney for prosecuting or assisting in the prosecution of any claim against the United States involving any subject matter with which he was directly connected while he was in an active duty status.

This language, contained in this existing law, includes, in general, the same restrictions contained in proposed new section 207 of the pending bill. Therefore, if the pending bill is enacted into law, there would seem to be no occasion for a retention of the above-quoted

paragraph specifically with reference to retired officers of the regular services of the Armed Forces of the United States.

To retain this provision would render such officers the only class of Federal retired employees, civilian or military, subject to two parallel criminal laws prohibiting the identical conduct involved with precisely the same penalties; namely, \$10,000 fine or imprisonment for not more than 2 years, or both. The retention of the effectiveness of section 283 of the Criminal Code with reference to retired officers of the regular services of the Armed Forces is, therefore, apparently unnecessary. Consequently, it is apparent that the inclusion of the parenthetical matter, contained in lines 22, 23, and 24 of page 20 of the bill, is not necessary with reference to present section 283 of title 18 of the code, since retired officers of the regular Armed Forces of the United States will be under the prohibitions in the new section 207 of the pending bill, when enacted, as they are presently restricted under the existing law.

The associations wish again to thank the committee for having been permitted to present their views. They wish to assure the committee that they support the maintenance of all necessary protections to the interests of the Government and that their recommendations have been made with that in mind.

That concludes my statement.

For convenience, I attach an appendix which contains specifically the two recommendations.

(The appendix referred to is as follows:)

APPENDIX

CHANGES IN H.R. 8140 RECOMMENDED BY THE COMMISSIONED OFFICERS ASSOCIATION OF THE PUBLIC HEALTH SERVICE AND THE ASSOCIATION OF COMMISSIONED OFFICERS OF THE COAST AND GEODETIC SURVEY

(1) That the term "Armed Forces" contained in the title of new proposed section 206 of the Criminal Code in line 20, page 13 of section 1 of the bill and in the text of said proposed new section 206, contained in line 22, page 13 thereof, be changed to read "uniformed services" so that the said proposed new section 206 will read as follows:

"§206. EXEMPTION OF RETIRED OFFICERS OF THE UNIFORMED SERVICES

"Sections 203 and 205 of this title shall not apply to a retired officer of the uniformed services of the United States while not on active duty and not otherwise an officer or employee of the United States, or to any person specially excepted by Act of Congress."

(2) That the parenthetical matter, contained in lines 22, 23, and 24 of page 20 of the bill; namely, "(except as they may apply to retired officers of the Armed Forces of the United States)" be stricken from the bill.

ARE REGULAR RETIRED OFFICERS "DIFFERENT"

(A commentary on H.R. 8140, prepared for the Senate Committee on Judiciary)

A careful review of Report No. 748 accompanying H.R. 8140 warrants the closest attention of the Committee on Judiciary. On page 10, subparagraph (e) states that: "Under present law, retired officers of the Armed Forces of the United States, while not on active duty, occupy a peculiar and complex position * * *. The problems involved in the peculiar status of retired officers of the Armed Forces while not on active duty are of a complexity that requires further specialized study for solution. The committee therefore determined to omit this class of persons from the bill * * *."

It is respectfully submitted that a careful reading of the introductory matter in this same report will indicate that the historical situation which is outlined as the incentive for action leading to H.R. 8140 in relationship to all other Government employees is exactly, in essence, the situation which causes the "complexities" in the case of retired officers of the Armed Forces. The only differences are in the specific details, and not the principles at all.

If the words of the report concerning uniformity, fairness, equality, and justice are to be applied across the board, it is submitted that there are no germane reasons that one relatively small category of former Government employees should be excluded from the benefits of this bill which brings sense out of the confusion which is recognized in the instance of all former Government employees as well as retired armed services officers.

The purpose of the bill as stated on page 2 is :

"The purpose of the bill is (1) to strengthen, revise, and simplify existing Federal conflict-of-interest laws, (2) to make appropriate general provision for consultants and temporary employees in the executive branch, the independent agencies and the District of Columbia, and (3) to integrate these conflict-of-interest laws with recodified prohibitions of bribery and graft—all to the end that improper and unethical practices will be prevented without depriving the Government of the services of competent and conscientious men and women."

Query: Would the purpose of this bill be violated or weakened if Regular Retired Officers of the armed services were included in its provisions?

Page 2 of the House report starts discussing the topic "reasons for the bill."

Direct quotes from a 1958 Subcommittee 5 of the Committee on the Judiciary are used:

"Existing conflict-of-interest law comprises overlapping, inconsistent, and incomplete provisions * * *."

A quote from a 1960 study by a special committee on Federal conflict-of-interest laws of the Association of the Bar of the City of New York is also used:

"The statutory law—most of it a century old—is not broad enough to protect the Government against the manifold modern forms of conflict of interest."

Although a negatively stated proposition, the sentence recognizes the ancient vintage of some of these laws, and injects realistically the changing times as a salient element dictating the need for the change.

Query: Do these same general principles not apply to those laws affecting retired officers?

The President, forwarding the New York report to the Congress, is quoted in the House report on page 3. He stated:

"Five of these statutes were enacted before 1873. Each was enacted without coordination with any of the others. (1) No two of them use uniform terminology. (2) All but one impose criminal penalties. (3) There is both overlap and inconsistency. (4) Every study of these laws has concluded that, while sound in principle, they are grossly deficient in form and substance. (5) "The fundamental defect of these statutes as presently written is that: On the one hand, they permit an astonishing range of private interests and activities of public officials which are wholly incompatible with the duties of public office; (6) on the other hand, they create wholly unnecessary obstacles to recruiting qualified people for Government service. (7) * * *" (8) * * *."

(1) The President's report obviously does not refer to the other statutes affecting solely retired officers. There are several more of these.

(2) This is particularly true in the defining of "retired officers." In many instances (though not all) they have been defined as "officers of the Government" even when they are not on active duty. The reasons for this are even sometimes beneficial to overcome other statutory words in beneficial statutes which restrict benefits, traditionally part of retirement, such as hospitalization to "officers of the Government."

(3) Again, the President was not talking of those statutes affecting retired officers alone. There are four statutes which do not impose criminal penalties, than than one—and the retireds are in that one also.

(4) This is compounded for retired officers if for no other reason they are included in the statutes being discussed by the President as well as others.

(5) On this specific observation, a congressional committee in 1959 (the Hébert committee) which studied this area specifically as applied to retired officers reached exactly the same conclusion.

(6) This is not true concerning active duty officers. The Uniform Code of Military Justice and the regulations of the armed services make it clear that any such action is not only cause for dismissal—but is criminal.

(7) This is not really applicable unless applied to young men contemplating a career as an officer of the armed services. In this context, most certainly any effect at all would be obviously detrimental to the recruiting process.

(8) The remainder of the quote relates to specific exemptions enacted by Congress to encourage recruitment—and is obviously not germane to the discussion here.

The House report toward the bottom of page 3 begins a very fundamental exploration of philosophy and fairness, as well as a historical development. Recognizing for brevity's sake the fact that the following quotes are taken out of context, they are not taken for purposes of proving an inconsistent point, but for brevity alone:

"* * * The principle which they embody in varying form—that a public servant owes undivided loyalty to the Government—is as important today as when the first of these statutes was enacted more than a century ago. However, these statutes were not adopted as a whole, but achieved their initial enactment, one at a time, over a long period, in response to specific existing evils which, from time to time were important political issues * * *."

This truism applies equally in philosophy to the retired officer statutes, which as already pointed out, are even more numerous than the relatively narrow field of statutes which apply to all other Government employees including the retirees.

"* * * In addition the concept of 'transacting business' if narrowly construed as would be likely in a criminal prosecution—would exclude many dealings with the Government, such as the clearance or rejection of license applications in the executive branch or before an independent agency.

"Similar defects exist in the case of Government officials who have left Government service. Clearly such an official should be prohibited from resigning his position and 'switching sides' in a matter which was before him in his official capacity * * *."

"But if the statutes often leave important areas unregulated, they also often serve as a possible bar to securing important personal services for the Government through excessive regulation when little or no ethical problem really exists * * *."

The excerpts directly above are discussing the situation of certain categories of Government employees, and certainly exclude the retired officers who are under extreme restrictions far beyond "switching sides" and so forth. The excerpts are submitted to focus attention to the fact that H.R. 8140 is "tightening" restrictions of these Government workers for the reasons stated, and if enacted with the retired officers included, would actually result in "loosening" the restrictions on this group.

Question. Why shouldn't retired officers have exactly the same restrictions, privileges, rights, and duties as the other Government employees insofar as what they do in civilian life?

At the bottom of page 4, the House report has an interesting observation: "In general, these difficulties stem from the fact that even occasional consultants are regarded as 'officers or employees' of the Government, whether or not compensated. As such, they are within the prohibitions applicable to regular full-time personnel."

Although apropos to a different context, the statement pinpoints the exact difficulty involved with retired officers. As alluded to already, they are considered "officers" and under the same prohibitions applicable to regular full-time personnel. They are the only group of former Government employees so segregated—and the reasons are historical and confused.

Question. Is there any germane reason why H.R. 8140 cannot rectify this situation by a simple definition for the purposes of uniformity in statutes applicable to bribery, graft, and conflicts of interest?

The substance of page 5 of the report deals with the fundamental principle of "fairness" to partners, tax lawyers, and so forth under specific sections of the current law. Hence, extracts of words below are taken out of the context for this purpose:

"* * * though he personally has no connection with any case * * * unfairly affects accountants * * * totally uncoordinated language or in policy * * *. They should be confined to 'switching sides' * * * a drastic penalty for contributing to public service * * *. It is manifest to the Committee on the Judiciary that the existing Federal conflict-of-interest laws require revision. The proper operation of a democratic government requires officials be independent and impartial * * *. It is also fundamental to the effectiveness of democratic

government that, to the maximum extent possible, the most qualified individuals in the society serve its government * * * its employees should not be denied the opportunity available to all other citizens, to acquire and retain economic and other interests, except where actual or potential conflicts with the responsibility of such employees to the public cannot be avoided."

Again the point must be emphasized: While much of the foregoing language seems to imply a harbinger of great restrictions on Government employees, it moves the restrictions backward in the case of retired officers. Hence the proposed statute might appear to be "harsh" as applied to Government employees; it liberalizes the restrictions placed on retired officers.

Question. Is there any reasons why retired officers should continue under statutes which are far more stringent than new statutes being enacted for other Government employees which are far harsher than before?

To end the discussion on the "reasons for the bill" the following from page 7 of the House report is quoted:

"Other inequalities and numerous technical deficiencies could also be cited."

To this, the retired officers could add an "Amen."

Now, what makes retired officers any different from their fellow citizens insofar as the actual needs for bribery, graft, and conflict-of-interest statutes are concerned?

1. Does the fact that a Regular officer receives retired pay from the Government constitute a salient point which requires different standards of conduct?

Obviously not. Several groups of citizens receive retired pay from the Government in recognition of faithful and devoted service. Civil servants, Congressmen, Retired Reserve officers; non-civil-service career civilians; and all classes of enlisted men of the Armed Forces receive retired pay from the Government.

2. Is the fact that the Regular officer's retired pay is noncontributory, a salient reason?

Apparently not. Enlisted personnel of the armed services and all retired reservists also receive noncontributory retirement benefits.

3. Is their status as officers in the Regular service a salient reason for discrimination?

If the word "salient" is used in its legally philosophical sense it would seem not. Many Reserve officers have served on active duty far longer than many retired Regulars. They are receiving retired pay commensurate (in fact exactly equal to) the Regular. The basic difference has been the administrative transfer from one status to another has never been accomplished, usually for completely unrelated reasons.

4. Is the fact that Regular retired officers are subject to recall to active duty a salient reason to discriminate against them?

Retired officers are subject to recall to active duty in times of war. On the other hand, Reserve officers are subject to recall to active duty in times of emergency (as is the present case of actuality today, with thousands of Reserve officers temporarily back on duty). In addition, Reserve officers of the Active Reserves are allowed to spend 2 weeks a year on active duty. Retired officers can be voluntarily recalled to active duty in peacetime if requested by the Secretary of the Navy and if the retired officer agrees. Obviously the Secretary then controls any element here in conflicts-of-interest cases. The number so recalled is infinitesimal when compared to the Reserve on duty, and these who are recalled serve in positions like the Curator of the Naval Academy Museum; Director of Naval History; Superintendent of the Naval Home; and on special pay boards. Obviously, nonsensitive procurement areas.

5. Is it a salient point that many retired Regulars were in procurement billets while on active duty?

The number of civil servants in procurement jobs far exceeds the number of Regular officers. In fact, many Reserve officers serve in procurement billets as well.

6. Is the fact, then, that Regular officers, because of their duty stations and so forth, gain specialized knowledge of systems and procedures, a salient point in the discussion?

Of course, anyone in Government gains certain elements of knowledge because of his job which do not necessarily translate themselves to every other Government employee. In all elements of the spectrum from the civilian secretariat of the armed services; congressional committee assignments; through senior political appointees and civil servants; all the way down to the blue collar workers, individuals, because of their jobs gain entree to information of value

to them in future dealings with the Government. The question is really not what information one might learn then, but the ethics of using this information in civilian pursuits. Since all other classes may use the information learned, so long as it is legitimately used (the purpose of H.R. 8140), it is submitted that retired Regular officers should be able to use theirs within the same ground rules.

7. Is the fact that military service cements very close personal relationships a germane reason to restrict Regular officers more than other Government employees after retirement?

Again, with the vastness of modern government, it is hard to support this proposition. Reserve officers, again, often run a completely parallel career to a Regular. Enlisted personnel and civil servants form close personal ties. In fact, in specific "business" considerations, a civil servant, shifting to a commercial firm dealing in the area in which the civil servant spent his career, knows far more about this area than any officer who is periodically rotated in duty.

8. If the question of suspicion of ethics and integrity is involved here, is it fair to impugn the ethics and integrity of a man solely because of his status as a retired Regular officer?

This is an extremely galling question to those involved. There is not one scintilla of evidence to warrant the impugning of the integrity of the class of men known as "Regular retired officers."

9. Has this whole area of discussion ever been specifically investigated by the Congress, and if so, what were the results?

Yes, it was investigated from July 7, 1959 through September 1, 1959. The actual results were negative. The committee, however, remarked:

"We have been assured by Defense Department officials and others that the procurement process has so many safeguards, influence cannot play a part. If this be so, then the additional statutory safeguard of isolating recently retired officers and retired civilian officials employed by defense contractors, away from the selling process, will be an added useful resource."

It is submitted that the above statement, as applicable to H.R. 8140 could apply across the Government board, and if so, represents even more reason for putting all former employees in the same boat.

10. Were there any results of the hearings referred to above?

Yes. The Department of Defense issued a directive "defining" selling as used in the statutes. The definition was extremely broad, and already has been struck down to some extent by a ruling of the Comptroller General in a case referred to it in point by the Department of Defense.

11. Were there any other results from this hearing and the DOD directive?

Yes, many retired officers quit their civilian jobs for fear of being in violation of the new directives. In addition, many companies adopted a policy of "no hire" in the case of Regular retired officers, for fear of collateral attacks in the premise.

12. Does this hurt the defense posture of the United States?

A. If morale has a correlation to success on the battlefield, it does. Active duty officers, facing retirement, or even contemplating it in the far future, "look to their families' security" much like other Americans. Knowledge that they will be barred, by extremely broad language, from utilizing the only skills they gain as adults is quite devastating to morale. The more senior these men become the closer to retirement they come and yet, the greater military responsibilities they assume.

B. If we assume that there is a shortage of technical talent in this country, most assuredly, removing Regular officers from the "swim" for any period after retirement, waters down their capabilities to that extent. Under the confusion of the current directives, based on the confusion of the current statutes, the officer and industry are taking tangible risks if the officer's technical capabilities are used in industry.

13. But isn't industry free to hire officers in "nonselling" jobs?

Yes, theoretically. The problem here is in what is meant by "selling." It is this word alone which causes the confusion and generates the risks. The definitions of selling have been so broadened as to preclude "any liaison which might remotely lead to a sale" and this simple clause actually caused the Department of Defense to ask the Comptroller General of the United States whether an officer was "selling" if he answered questions initiated to him by the Secretary

of the Navy or high military officials; if he attended Navy League meetings; and if he attended social parties at which active duty officers or civil servants were in attendance. It is submitted that if the Department of Defense did not know whether these activities were "selling," that it is an unwarranted burden on the individual officer and industry to define the limits of selling. In the cited case, the officer's pay was withheld pending the Comptroller General's opinion, and was even checked against him retroactively for a few days.

14. Is the "selling" referred to above connected to activities with which the officer was connected while in service?

Not directly. Of course, those activities with which the officer was concerned in the service are specifically covered in the statutes and would be covered in H.R. 8140.

But, in the actual sense that the word is used in the statutes and in the regulation, the word refers across the board, without any exception, to any and all activities connected with the service in which the officer holds a retired status, whether the system or equipment was even in being when the officer retired.

15. What effect will the new Defense Supply Agency have, for example on a Regular retired Air Force officer in conducting "selling" activities with them.

This is not clear. It could be argued that the officer would have to ascertain what department's payroll the procurement officer was on; and then to which service the products would be issued eventually.

16. What problems would arise if the Navy was procuring the McDonnell Co.'s F4H-2 Phantom fighter plane, and the project manager was a retired Air Force officer; if the Air Force should also decide to buy the plane?

The Air Force officer would either have to give up his retired pay (if he had been retired more than 2 years); go to jail if he had been retired less than 2 years; or quit his job.

17. Then, if an officer takes a job with a company which is not currently selling to the service in which he holds a retired status, is he in any career jeopardy in the future?

Yes. Even a company which has never done 1 cent's worth of business with the Government and might hire a retired Regular officer as a sales manager, would have to turn him loose or change his career if a decision were ever made to even try and sell one of the products to the service in which the retired officer holds status.

18. Is there any germane advantage to a "cooling off period" after retirement?

In the context of this discussion, unless some germane reason exists to sequester Regular retired officers only from all other Government employees, the answer would seem to be "No". On the contrary, a dramatic example might point up the situation which could occur during a "cooling off" period. Suppose for example, Colonel Glenn were suddenly retired for disability. Under a cooling off period (which actually exists with criminal sanctions today, for 2 years) he would be precluded from contributing his skills to the space program as a member of industry.

19. Are retired officers hired by defense industry commanding large salaries?

Some are. However, according to the Hébert committee report, the average salary paid to all officers above the rank of major, is \$950 a month, just slightly less than the active duty pay and allowances of an active duty major who does not receive extrahazardous pay. It is slightly more than the next lower ranked officer who does.

20. Is there any correlation between this salary scale and the value to industry of the Regular retired officer?

No one knows for certain. But given a normal law of supply and demand in the labor market, and the normal impetus of the individual to receive as high pay as he can command, it would seem that facts belie any premise that these officers can in fact, materially influence procurements at all.

21. Cite statistics on profits to support the above statement.

The Defense Department procures goods and services in excess of \$20 billion a year. If the average "profit" is 10 percent, then the profit on a single contract of \$114,000 would pay the officer's salary for a year. This is an infinitesimal portion of the total, procurement budget.

22. Then what value are these people to industry?

They are an important member of the teamwork which can help get business. They can translate the operational environments for scientists and technicians who have not been in these environments; they can steer companies from blind

alley projects on which much money could be spent, and into more fruitful pursuits with a better chance of payoff. They can also directly contribute (where so trained) to the scientific and technical efforts.

23. But some retired officers make a lot more than \$950 a month. Are these people any different?

Of course. Some active duty officers have tremendous managerial skills and technical skills. Some do not. Some, while in service, command and manage extremely complex Government-owned industrial facilities. Some are, by nature, analytical geniuses. Unfortunately, some are pretty mediocre people under any circumstances. The point here is that a spectrum exists, and it is obviously impossible to legislate in an isolated part of the spectrum.

24. Then, what is the solution?

The solution appears to be relatively simple. If the discussion and questions above point out the desirability to put all former Government employees on the same basis as to restrictions after leaving Government, if the sense of H.R. 8140 is to alleviate a confused and complex situation, then the following steps could be taken:

A. Eliminate the parenthetical matter at the end of the bill relating to the keeping of those sections of 18 U.S.C. 281 and 283 which apply solely to Regular retired officers.

B. Strike out section 206 of the bill if:

C. A clause is added in section 202 of H.R. 8140 that:

"For the purposes of this statute a Regular retired officer of the Armed Forces not on active duty is to be considered as a 'former employee' of the Federal Government."

D. Repeal 5 U.S.C. 59c (the so-called General Harbord bill which was enacted in 1924 when General Harbord became president of the Radio Corp. of America). This is a noncriminal statute, and is generally repugnant for the reasons stated in detail above, and is discriminatory against only Regular retired officers solely because of their status as such. This is part of the "cleaning up process" needed, and is an example of the historical development above.

E. Repeal 10 U.S.C. 6112(b). This has already been passed by the House (H.R. 11217), and is currently in the Senate. This provision is another "personality" statute which remains on the books. It forbids payments to Navy and Marine Regular retired officers if, during their entire retired lives, they "sell" war supplies or materials of any nature to the Department of the Navy. No similar statute exists for the other services. This is also part of the "cleaning up" process.

It is believed that these extremely simple steps will completely solve the inequities existent today, and cause the executive of the general purposes and reasons stated in support of H.R. 8140.

Captain WILLENBUCHER. Thank you, Mr. Chairman.

Senator KEATING. Thank you, Captain Willenbucher.

The next witness is Capt. Joseph K. Taussig, Jr.

You may proceed, Captain Taussig.

STATEMENT OF JOSEPH K. TAUSSIG, JR., CAPTAIN, U.S. NAVY (RETIRED)

Captain TAUSSIG. I am Capt. Joseph K. Taussig, Jr., U.S. Navy, retired. I wish to thank you for allowing me to appear before you on this bill which is of extreme importance to the defense of this Nation, to persons like myself, and as a judicial principle which has long needed recognition in a sane and unemotional light.

You gentlemen have heard, and undoubtedly will hear more, on the specific legalistic points of the bill before you in a substantive way. You will hear and have heard proponents for striking out this word or clause, and that word or clause. In my short statement to you, I will focus my attention to the humanistic side of this, for you are contem-

plating the enactment of a criminal statute—and I believe it is fair to link crime with humanics. In this context, I am asking for inclusion in the bill rather than exclusion. The bill from my point of view is very favorable to me, sir.

Senator KEATING. That is a refreshing thing to hear.

Captain TAUSSIG. Briefly in a biographical sense, I was born in 1920, educated in the public school system, was a Boy Scout, went to dances whenever my pocketbook would allow, and lived a relatively normal life for a young American. In 1937, just after my 17th birthday, I was appointed to the Naval Academy, and I was commissioned an ensign in the Regular Navy a few months before my 21st birthday. I was a professional naval officer then, from 1937 until I was retired for physical disability of 80 percent in 1954. In the interim, I served my country in two wars—World War II and the Korean conflict.

I am married and have two children. My son, I am proud to say, enters the Naval Academy next week to become the fourth Taussig in direct line to have the privilege to serve his Nation as a professional naval officer and Naval Academy graduate.

Since my forced retirement in 1954, I have been much concerned as a personal matter with the problems of earning a living and raising my family.

I believe that this is a right to which I am entitled as an American citizen, and that I should be free to seek my fortune in any legitimate pursuit, and to the best of my abilities short of indulging in bribery, graft, and conflicts of interest in the sense of H.R. 8140.

I do not seek nor expect any special privilege in the premise. I am a first-class citizen of this Nation, and have done, and will continue to do my part in upholding this status without seeking special privileges which to me need only be sought by the weak.

But while I do not seek privileges, I believe I have every standing as a citizen, to seek my rights—and my path has led to this committee because in H.R. 8140 the rights I seek are spelled out in detail which I am more than willing to accept.

The gentlemen of this committee are all lawyers and well aware of the interplay between rights and duties, privileges and obligations. This is the context of my concluding remarks.

Very few people, except we Regular retired officers really appreciate and understand the direct and indirect restrictions placed upon us in pursuing the normal American right to earn a legitimate living after retirement. Few apparently can even understand my indignation at the treatment I have received under the existing statutes which H.R. 8140 intends to leave on the books because to quote "the situation involving Regular retired officers is very complex." I submit to you gentlemen that there is no germane reason why the situation regarding Regular retired officers is more complex insofar as the tenets of bribery, graft, or conflicts of interest, than any other group of Government employees and former Government employees, be they civil servants, enlisted men, Congressmen, dollar-a-year men, political appointees, retired Reserve officers receiving pay, or anybody else. I believe that my standards of conduct should certainly be no less nor any more than those expected of these groups. But let me outline an actual situation which has recently directly affected me.

In late March I received a 14-page directive from the Department of Defense entitled "Standards of Conduct." I read this directive, and added it to my file of over 20 other directives, and a long list of statutes and statutory interpretations which dealt solely with me as a member of the class known as Regular retired officers.

However, the new Department directive was somewhat different than the others. It was the first directive sent me since the hearings before the House in 1959, which Captain Willenbacher mentioned, wherein the activities of retired officers working for defense industries was thoroughly investigated. The results of these hearings, or rather the finding of fact were basically that not one single case of wrongdoing involving moral turpitude was discovered and in those cases which might come under the nonmoral turpitude statutes, actually, not one case was proven.

Yet, here was a Department of Defense directive, enlarging on the definitions of the restrictive words in the statutes * * * and what made me totally indignant, was that the directive required me, as a Regular retired officer, to submit a statement of employment. I was not indignant because the civil servants and the Reserve officers who were covered by parts of the directive did not have to submit any such statement—for I am willing to indulge the anglo-American presumption that their conduct is as good as mine until proven in an individual case—I was indignant because I was now grouped with the three other classes of people in this country who must register their employment activities with this Government, to wit: Aliens, Federal parolees, and Communists.

I submit to you gentlemen that I believe that my honorable service to my Nation as a professional leader of the young men of this Nation in wartime, warrants a more considerate treatment of my pride and dignity.

I wrote to the Secretary of Defense and strongly protested the directive, and stated that I was certain that he has not been adequately briefed on its implications either from a morale point of view for those currently involved or for those still in service; or from the other side of the coin—had the directive been a Soviet directive, and in effect restricted any retired Soviet officer from assisting Soviet industry on pain of going to prison for 2 years and suffering a \$10,000 fine, or if he had been retired more than 2 years, merely losing his retired pay.

I think we would think the Soviets had lost their minds.

You see, gentlemen, few people realize that the statutes and policies have nothing to do specifically with only matters concerning us when on duty. They cover the entire spectrum of activity.

I asked the Secretary three specific questions, and asked him to tell me if under his new definition of the word "selling" I would be in violation if I answered questions initiated by the Secretary of the Navy or high military officers; whether attendance at Navy League and other trade association meetings were forbidden; and whether attendance at Naval Academy Alumni Association meetings and casual social parties attended by Navy Department people were forbidden. Those were the three questions.

I believe that the reaction will electrify you gentlemen who are used to hearing all sorts of things:

I have yet to hear from the Secretary of Defense or the Secretary of the Navy who were also addressed in my letter. However, I did receive a letter from the Comptroller of the Navy informing me that my retired pay had been stopped pending a decision by the Comptroller General of the United States as to whether my activities violated the Department of Defense directive.

One, I almost expected such a referral, because I was pretty sure that the Defense Department could not possibly interpret their own directive. It is so complex, and is based on such an utter confusion of statutes and stare decisis, that nobody could interpret it. And yet, they had sent it to me as a Regular retired officer and expected me to interpret it.

Despite the release to the press to the contrary, my pay was actually stopped retroactively for about 2 weeks back. The Department told the press that my pay had been stopped as of May 1, but actually, I was informed that it had been stopped on April 17, and they did not pay me from April 1 to April 17—or thereafter. The Comptroller ruled last week, and his ruling was in my favor. However, it is a very narrow ruling. I can now answer questions asked me by the Secretary of the Navy, and drink a cocktail with my Naval Academy roommate and so forth and still keep my pay. I am still living on sufferance.

The point I want to make and make as heavily as possible is this: Solely because I have the status, which I earned in the devoted service of my country, as a Regular retired officer, I am willing to accept a high standard of conduct, if for no other reason the defenses of this Nation will suffer indirectly if I disgrace my uniform. On the other hand, I believe that it is basically and fundamentally un-American to have to live under a fuzzy set of rules which even the Department that writes them cannot interpret; suffer loss of retired pay without any semblance of a judicial or quasi-judicial hearing or any semblance of the due process clause of the Constitution which is reserved for my fellow citizens.

I realize that because of my status solely as a Regular retired officer that the due process clause does not apply to me in the premise. However, I do believe that unless there is an overriding military reason to the contrary, I should be accorded the right, in the sense of it being a privilege, whenever possible.

This is my personal case. I could cite others equally ridiculous. They have absolutely nothing to do with the activity of the individual while in the service. The cases do not apply to "changing sides" or anything else, they apply solely because of the peculiar status as "Regular retired officers."

Item: A retired marine bought a filling station. The Marine recruiters who had to buy gasoline on the civilian market, bought from the gasoline station. The Marine officer lost his pay.

Item: A former Chief of Army Chaplains, with a new missal—a rather nice play on words—wanted to present it to the Defense Chaplains' Board. He could not. Conflict of interest.

Item: Two former enlisted men who had earned their commissioned status were deprived of their retired pay, and retroactively for several months, for representing competing beer firms in Norfolk as public relations representatives. The beer that their company sold was not even bought with appropriated funds.

Finally, though it is not the direct judicial concern of this committee, I would point out that if there is the shortage of technical brains and administrative abilities in this Nation which we read so much about; by indirect action, your including of Regular retired officers in H.R. 8140 will make available, without recourse to sneaking around and equivocation, a large, and probably the best reservoir of unused technical talent existing in this world today.

I will be frank with you, many of us who are trained to be brave in the face of an armed and determined enemy on the battlefield, are frightened in the face of the possibility of losing our retired pay and security, or worse, going to jail for pursuing activities which are allowed to everyone else in this Nation without fear of reprisal, and without regard to previous condition of servitude.

I am naturally, and I believe you will see my point, completely out of patience with the protocol and nicety boys who say that our status is so complex that it must be studied further, and so forth and so forth. We have been studied in detail by Congress. We have come through with flying colors.

H.R. 8140 can be easily amended to include us in its provisions. I hope that you gentlemen will see your way clear to perform this simple service for us.

Senator KEATING. Thank you very much, Captain Taussig.

The committee will take a recess until Senator Hruska gets here.

(Brief recess.)

Senator HRUSKA (now presiding). The subcommittee will come to order.

We will continue the testimony on H.R. 8140.

Our next witness is the Senator from New York, who has for many years been interested in legislation along the lines suggested in H.R. 8140.

Senator JAVITS, we welcome you. We know that your contribution will be very helpful and that you will contribute a great deal to our understanding of the needs in this particular field.

Will you proceed with your statement?

STATEMENT OF HON. JACOB K. JAVITS, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator JAVITS. Mr. Chairman, first let me thank the committee for hearing me rather late in the hearings, as I know that it may be the final opportunity to be heard.

Second, my interest in this subject originates from the fact that I was attorney general of the State of New York, and had the honor of inaugurating the administration of our own State code of ethics, applicable to our own public officials.

Senator HRUSKA. Was that done by statute?

Senator JAVITS. It was done by statute, and the statute took effect when I became attorney general of the State, which was in January of 1955. I had the interesting experience of installing the administration of our New York State Code of Ethics, and seeing it through its first 2 years.

I also have the honor of being the sponsor of S. 603, cosponsored by a member of this committee, Senator Keating. S. 603 is a codification

of a report of the Association of the Bar of the State of New York through its Special Committee on the Federal Conflict of Interest Laws, headed by Roswell B. Perkins, who testified before the committee this morning. I will comment on his testimony.

Also, I am the author of two bills in addition to S. 603: S. 637, in which, also, Senator Keating was a cosponsor, which deals with the disclosure of communications received by Government agencies from Members of Congress, and also Senate Concurrent Resolution 10, which deals with an effort to develop a separate code for Members of Congress.

I believe that H.R. 8140, which is before the committee, should be amended to deal with communications by Members of Congress to agencies and departments of Government. As we all know, such communications do occur; Senator Dirksen has on occasion very eloquently described the duty of a Senator or a Congressman to communicate with Government departments, and the only thing we want is that they should be of public record. We understand that the departments have difficulty in screening such communications. We know they can be very influential, and we know that generally speaking they are entirely legitimate. We know, however, that they have the capacity of turning in a sour direction. Therefore, in the traditional American way, we say, "We know it is something that has to be done, indeed it is advantageous to have it done, it gives the citizen a channel to correct bureaucratic oppression and injustice through the legislative arm, provided that there is complete disclosure."

And so I urge very strongly upon the committee that the essence of S. 637, which is my bill, as I say, cosponsored by Senator Keating, introduced January 26, 1961, be incorporated in H.R. 8140.

The other point that I would like to make is the need for taking a totally different sighting on Members of Congress than we have in H.R. 8140. As it comes over from the other body, three of its six operative sections apply to Members of Congress. Three do not.

Now, the operative sections which do apply are sections 201, the so-called bribery section, both on the giving and the receiving end, and section 203, which deals with compensation equivalent to inducing or influencing actions which, because so induced or influenced, become improper. Section 204 is the traditional section dealing with claims representation and the so-called 2-year rule and, of course, it is quite proper that we include Members of Congress there. Section 205 deals with claims representation by officers and employees.

But when you get over to section 207, where you get into the really gray area, in the sense of disqualification of yourself and your partner from representing interests with which you have had something to do when you were an incumbent, and when you get over into section 208, an even more sticky problem for legislators, where you are dealing with problems of personal financial interest which might influence your action in a matter in which you have a duty and responsibility to act as a Government official, there the bill excludes Members of Congress.

Now, I think H.R. 8140 is not tailored to deal with the problems of conflict of interest as they arise in the Congress, since it includes Members of Congress in the most obvious ways, and it excludes them also in the most obvious ways. The problem is far too complex to

enable them to be included under those sections which deal with representation and conflicting financial interest, because there is a very great difference in the nature of their activities between Members of Congress and executive officers. After all, we come into contact with everything as Senators, not just the Department of Commerce or the Department of Interior, or some other department, but anything that happens in Government comes within our cognizance.

Senator HRUSKA. Senator Javits, there are only three sections, are there not, which now apply to Members of Congress?

Senator JAVITS. That is correct. And the other three, the remaining three do not.

There are six operative sections. The first three do, the most obvious ones, the bribery ones, the extra compensation, the naked representation, as it were, of a client, they include the Members of Congress.

But the two where you do have the delicate relationships, the disqualification after incumbency and the conflicting financial interests expressly exclude Members of Congress.

And I believe they are excluded because there are a lot of aspects of that kind of a code of ethics, which make it impossible to deal with it as broadly as this statute deals with executive employees.

And so I prefer for myself and I urge the committee to consider applying a code of ethics to Members of Congress which will be adaptable to their responsibilities and to their functions. And it is this kind of an approach which is contained in Senate Concurrent Resolution 10. What that does for all practical purposes is to establish a committee of the Congress to set up a code of ethics, to establish in the interim an interim code of ethics, but to commit the question of enforcement and the question of supervision to the Congress itself, whereas simply including Members of Congress in all sections of H.R. 8140 would commit that whole question to the Department of Justice. And I feel that this is the kind of a matter in which we ought to bear the responsibilities for regulation here. We have the power to expel a Member from the Congress by an appropriate vote, indeed it is provided by the Constitution, and that is the ultimate sanction. In addition, it is the voters who have the final authority over all Members of Congress. And it seems to me that to place the control over a code of ethics for Members of Congress in the Department of Justice would tend to break down the independence of the Congress.

Let us remember that the people have an enormous responsibility to maintain the independence and the integrity of the Congress, just as they have a responsibility to see that Members of the Congress, like other Government officials, comport themselves according to the ethical standards which represent the consensus of high morality within the community.

I think that this is a very, very critical subject for the committee to think through, perhaps the most critical in this whole package which is presented to you, because there you are not dealing with a matter of detail, you are dealing with a matter of fundamental policy and principle.

Senator HRUSKA. It is your proposal that Senate Concurrent Resolution 10 should be adopted? And would it replace anything which is embraced in H.R. 8140?

Senator JAVITS. It would replace all of the provisions of H.R. 8140 as they relate to Members of Congress, in other words, officials who are on the legislative side.

Senator HRUSKA. Would it amend section 201, section 203, and section 204 so as to expressly exclude Members of Congress from the terms of those sections?

Senator JAVITS. No. All that I point out, Mr. Chairman, is that it would subject Members of Congress to a complete code of ethics and apply a different type of administration and sanction to them. The main point that I urge upon the Judiciary Committee is that there should be a complete code for the Congress, but that we should not impair the integrity of the Congress, one of the three great branches of our Government, as an independent arm, by giving to the administration of such a code of ethics for Members of Congress, to the Department of Justice, the executive department. I believe that we are dutybound to keep it here in the Congress where we have adequate authority.

I emphasize that, Mr. Chairman, because I think it is a critically important question for us here in the Congress.

Now, the final point that I want to make is to support the testimony of the Association of the Bar of the City of New York as given by the chairman of its committee. There are a number of particular recommendations for change which are made in that testimony which I think commend themselves very materially to the committee.

Of course, there is the question of administrative remedy which I think should be added to the criminal penalty, so that there would be administrative authority as well as criminal authority for enforcement of the code of ethics.

Also, I think that in recommending a gift section the association of the bar made an excellent suggestion that specificity be supplied by regulation. Indeed, it is possible that there may be some departmental differences thoroughly dictated by the facts. I think such a provision will give a degree of flexibility. After all, we want to make this realistic in terms of established morality; we don't want to catch some unwitting, innocent employee who is a fine Government servant. Therefore, the idea of giving, especially in regard to this gift question, the power to make regulations with real specificity, instead of leaving it to the individual employee on some broad statutory base to make his own definitions, commends itself to me very highly.

So my final point, Mr. Chairman, is to commend to the committee a careful review of the suggestions and amendments made by the association of the bar with a view toward their incorporation in this bill.

And I refer specifically to the exhibits attached to Mr. Perkins' testimony regarding gifts, to which I have already referred; abuse of office; administrative remedies, which are contained in section 12 of my bill; and the preamble and declaration of purpose contained in section 1 of my bill. And in order to have it clear on the record, I will state that the recommendations which are made by the bar association are all contained in S. 603, of which I am the sponsor, and which is their bill.

Senator HRUSKA. We will see that is incorporated in the record for ready reference.

Senator HRUSKA. Should we do that same thing with respect to S. 637, dealing with communications?

Senator JAVITS. I should like to have that done, also.

And with reference to S. 603, section 6 of S. 603 covers the gift section raised by the bar association.

Section 7 provides the abuse-of-office section.

Section 12 provides the administrative section.

And section 1 provides the preamble and declaration of policy and purpose section.

(The bill referred to is as follows:)

[S. 603, 87th Cong., 1st sess.]

A BILL To supplement and revise the laws prescribing restrictions against conflicts of interest applicable to employees of the executive branch of the Government of the United States, and for other purposes
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TABLE OF CONTENTS

TITLE I—PROHIBITED CONDUCT, ADMINISTRATION, AND PROCEDURE

- Sec. 1. Preamble ; declaration of policy and purpose.
- Sec. 2. Definitions.
- Sec. 3. Acts affecting a personal economic interest.
- Sec. 4. Assisting in transactions involving the Government.
- Sec. 5. Compensation for regular Government employees from non-Government sources.
- Sec. 6. Gifts.
- Sec. 7. Abuse of office.
- Sec. 8. Postemployment.
- Sec. 9. Illegal payments.
- Sec. 10. Administration.
- Sec. 11. Preventive measures.
- Sec. 12. Remedies ; civil penalties ; procedures.

TITLE II—CRIMINAL PENALTIES

- Sec. 21. Acts in violation of Executive Conflict of Interest Act.

TITLE III—AMENDMENT AND REPEAL OF EXISTING LAWS

- Sec. 31. Amendment of title 18, United States Code, sections 216 and 1914.
- Sec. 32. Amendment of title 18, United States Code, sections 281, 283, and 434.
- Sec. 33. Amendment of title 18, United States Code, section 284.
- Sec. 34. Amendment of title 22, United States Code, section 1792.
- Sec. 35. Amendment of title 5, United States Code, section 30r(d).
- Sec. 36. Repeal of particular substantive restraints.
- Sec. 37. Repeal of particular substantive restraints applicable to retired officers.
- Sec. 38. Repeal of exemptions from particular conflict-of-interest statutes.

TITLE IV—MISCELLANEOUS PROVISIONS

- Sec. 41. Short title.
- Sec. 42. Effective date.

TITLE I—PROHIBITED CONDUCT, ADMINISTRATION, AND PROCEDURE

§ 1. Preamble ; declaration of policy and purpose

(a) The proper operation of a democratic government requires that officials be independent and impartial ; that government decisions and policy be made in the proper channels of the governmental structure ; that public office not be used for personal gain ; and that the public have confidence in the integrity of its government. The attainment of one or more of these ends is impaired whenever there exists, or appears to exist, an actual or potential conflict between the private interests of a government employee and his duties as an official. The public interest, therefore, requires that the law protect against such conflicts of interest and establish appropriate ethical standards with respect to employee conduct in situations where actual or potential conflicts exist.

(b) It is also fundamental to the effectiveness of democratic government that, to the maximum extent possible, the most qualified individuals in the society serve its government. Accordingly, legal protections against conflicts of interest must be so designed as not unnecessarily or unreasonably to impede

the recruitment and retention by the Government of those men and women who are most qualified to serve it. An essential principle underlying the staffing of our governmental structure is that its employees should not be denied the opportunity, available to all other citizens, to acquire and retain private economic and other interests, except where actual or potential conflicts with the responsibility of such employees to the public cannot be avoided.

(c) It is the policy and purpose of this Act to promote and balance the dual objectives of protecting Government integrity and of facilitating the recruitment and retention of the personnel needed by Government, by prescribing essential restrictions against conflicts of interest in the executive branch of the Government without creating unnecessary barriers of public service.

§ 2. Definitions

Unless the context of this Act otherwise clearly requires, for purposes of this Act the terms defined in this section shall have the respective meanings hereinafter set forth. The terms defined in this section include: "agency"; "agency head" and "head of an agency"; "assist"; "compensation"; "Government action"; "Government employee"; "intermittent Government employee"; "participate"; "person"; "regular Government employee"; "responsibility"; "State"; "thing of economic value"; and "transaction involving the Government".

(a) "Agency" means—

- (1) the Executive Office of the President;
- (2) an executive department;
- (3) an independent establishment within the executive branch; and
- (4) a Government corporation.

For purposes of this subsection (a)—

(i) the executive departments are the Departments of State; Defense; Treasury; Justice; Post Office; Interior; Agriculture; Commerce; Labor; and Health, Education, and Welfare; and

(ii) "independent establishment within the executive branch" means any establishment, commission, board, committee or other unincorporated instrumentality of the United States which is not—

- (A) part of an executive department or Government corporation; or
- (B) part of the legislative or judicial branches of the United States.

(iii) "Government corporation" means any corporation which is either defined as a "wholly owned Government corporation" in the Government Corporations Control Act of 1946 or is designated as a Government corporation for purposes of this Act by the President by regulations issued pursuant to section 10.

(b) "Agency head" and "head of any agency" mean the chief executive officer of an agency, who shall be the chairman in the case of an independent establishment which is a commission, board, or committee. The Secretary of Defense may delegate to the Secretaries of the Army, the Navy, and Air Force such of his responsibilities as an agency head as he may deem appropriate.

(c) "Assist" means to act, or offer or agree to act, in such a way as to help, aid, advise, furnish information to, or otherwise provide assistance to, another person with knowledge that such action is of help, aid, advice, or assistance to such person and with intent so to assist such person.

(d) "Compensation" means any thing of economic value, however designated, which is paid, loaned, granted, or transferred, or to be paid, loaned, granted, or transferred for, or in consideration of, personal services to any person or to the United States.

(e) "Government action" means any action on the part of the executive branch of the United States, including, but not limited to—

- (1) any decision, determination, finding, ruling, or order, including the judgment or verdict of a military court or board; and
- (2) any grant, payment, award, license, contract, transaction, sanction or approval, or the denial thereof, or failure to act with respect thereto.

(f) "Government employee" means any individual who is—

- (1) appointed by one of the following acting in his official capacity—
 - (A) the President of the United States, or
 - (B) a person who qualifies as an employee under this definition; and

(2) engaged in the performance of a Federal function under authority of the Constitution, an Act of Congress, or an Executive act; and

(3) under the supervision or authority of one of the persons listed in (A) or (B) under (1).

Notwithstanding the foregoing, the term "Government employee" shall not include any of the following—

- (i) officers and employees in the legislative and judicial branches of the United States;
- (ii) employees of the District of Columbia;
- (iii) employees of corporations other than Government corporations as defined in subsection (a) (iii) of this section; and
- (iv) a reserve of the Armed Forces, when he is not on active duty and is not otherwise a Government employee.

An individual shall not be deemed an employee solely by reason of his receipt of a pension, disability payments, or other payments not made for current services, or by reason of his being subject to recall to active service.

Every Government employee shall be deemed either "intermittent" or "regular", as determined by the definitions contained in subsections (g) and (j), respectively, of this section.

(g) "Intermittent Government employee" means any Government employee who has performed services as such employee on not more than fifty-two working days (which shall not include Saturdays, Sundays, and holidays) out of the preceding three hundred and sixty-five calendar days: *Provided, however, That—*

- (1) the President may issue an order increasing to not more than one hundred and thirty days the number of working days within a three hundred and sixty-five calendar day period on which a particular Government employee may perform services while still being classified as an intermittent Government employee for purposes of this Act: *Provided, That the President shall make a determination that the national interest requires the retention of such employee's services during a further specified period. A statement of the pertinent facts and of the President's determination of national interest shall be published in the Federal Register;*
- (2) a reserve of the Armed Forces, unless otherwise a regular Government employee, shall be classified as an intermittent Government employee for purposes of this Act while on active duty solely for training, irrespective of the number of working days of such training;
- (3) irrespective of the fact he has performed services on less than fifty-two working days, a Government employee shall be deemed a regular Government employee, as defined in subsection (j) of this section, and not an intermittent Government employee, if—

- (A) he was appointed to a position calling for regular and continuing full-time services, and
- (B) his appointment did not evidence an intent that his services would be for a period of less than one hundred and thirty working days in the three hundred and sixty-five calendar day period following such appointment.

The termination of any particular term of employment of an intermittent Government employee shall take effect on the day when the earliest of the following events occurs:

- (i) He becomes a regular Government employee, as defined in subsection (j) of this section;
- (ii) He resigns, retires, or is dismissed, or the termination of his status is otherwise clearly evidenced; or
- (iii) Three hundred and sixty-five calendar days shall have elapsed since the last working day on which he shall have performed services as an intermittent Government employee, unless his appointment was expressly for a longer period.

An intermittent Government employee shall be in such status on days on which he performs no services as well as days on which he performs services.

(h) "Participate," in connection with a transaction involving the Government, means to participate in Government action or a proceeding personally and substantially as a Government employee, through approval, disapproval, recommendation, decision, the rendering of advice, investigation, or otherwise.

- (i) "Person" means any—
 - (1) individual;
 - (2) partnership, association, corporation, firm, institution, trust, foundation, or other entity (other than the United States or an agency), whether or not operated for profit;

(3) State or municipality of the United States or any subdivision thereof, including public districts and authorities; and

(4) foreign country or subdivision thereof.

(j) "Regular Government employee" means any Government employee other than an intermittent Government employee, as defined in subsection (g) of this section. The termination of any particular term of employment of a regular Government employee shall take effect when he resigns, retires, or is dismissed, or the termination of his status is otherwise clearly evidenced.

(k) "Responsibility," in connection with a transaction involving the Government, means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, effectively to approve, disapprove, or otherwise direct Government action in respect of such transaction.

(l) "State" means any State of the United States and the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

(m) "Thing of economic value" means any money or other thing having economic value, and includes, without limiting the generality of the foregoing—

(1) any loan, property interest, interest in a contract, or other chose in action, and any employment or other arrangement involving a right to compensation;

(2) any option to obtain a thing of economic value, irrespective of the conditions to the exercise of such option; and

(3) any promise or undertaking for the present or future delivery or procurement of a thing of economic value.

In the case of an option, promise, or undertaking, the time of receipt of the thing of economic value shall be deemed to be, respectively, the time the right to the option becomes fixed, irrespective of the conditions to its exercise, and the time the promise or undertaking is made, irrespective of the conditions to its performance.

(n) "Transaction involving the Government" means any proceeding, application, submission, request for a ruling, or other determination, contract, claim, case, or other such particular matter—

(1) which the Government employee or former Government employee in question believes, or has reason to believe, is, or will be, the subject of Government action; or

(2) in or to which the United States is a party; or

(3) in which the United States has a direct and substantial proprietary interest.

§ 3. Acts affecting a personal economic interest

(a) ECONOMIC INTERESTS OF A GOVERNMENT EMPLOYEE.—No Government employee shall participate in a transaction involving the Government in the consequences of which he has a substantial economic interest of which he may reasonably be expected to know.

(b) ECONOMIC INTERESTS OF PERSONS IN WHICH A GOVERNMENT EMPLOYEE HAS AN INTEREST.—No Government employee shall participate in a transaction involving the Government in the consequences of which, to his actual knowledge, any of the following persons has a direct and substantial economic interest:

(1) His spouse or child; or

(2) Any person in which he has a substantial economic interest of which he may reasonably be expected to know; or

(3) Any person of which he is an officer, director, trustee, partner, or employee; or

(4) Any person with whom he is negotiating or has any arrangement concerning prospective employment; or

(5) Any person who is a party to an existing contract with such Government employee or an obligee of such Government employee as to a thing of economic value and who, by reason thereof, is in a position to affect directly and substantially such employee's economic interests.

(c) DISQUALIFICATION.—Every Government employee shall disqualify himself from participating in a transaction involving the Government when a violation of subsection (a) or (b) would otherwise result. The procedures for such disqualification shall be established by regulations issued pursuant to section 10.

(d) SUBSTANTIAL ECONOMIC INTEREST.—The term "substantial economic interest" may be defined by regulations issued by the President pursuant to section 10, but the term shall not include—

(1) the interest of a Government employee in his grade, salary, or other matters arising solely from his Government employment;

(2) the interest of a Government employee, or of a person referred to in subsection (b) solely as a member of the general public, or of any significant economic or other segment of the general public.

(e) **PRESIDENTIAL EXEMPTION.**—The President may issue an order suspending the operation of subsections (a) and (b), in whole or in part, as to a particular employee with respect to transactions involving the Government of a particular category or in connection with a particular assignment, provided that the President shall make a determination that under all the circumstances the national interest in such employee's participation exceeds the public interest in his disqualification. A full statement of the pertinent facts and of the President's determination of national interest shall be published in the Federal Register.

§ 4. Assisting in transactions involving the Government

(a) **GENERAL RULE FOR ALL EMPLOYEES.**—Except in the course of his official duties or incident thereto, no Government employee shall assist another person, whether or not for compensation, in any transaction involving the Government—

(1) in which he has at any time participated; or

(2) if such transaction involving the Government is or has been under his official responsibility at any time within a period of two years preceding such assistance.

(b) **ADDITIONAL GENERAL RULE FOR REGULAR EMPLOYEES.**—Except in the course of his official duties or incident thereto, no regular Government employee shall—

(1) assist another person for compensation in any transaction involving the Government;

(2) assist another person by representing him as his agent or attorney, whether or not for compensation, in any transaction involving the Government.

(c) **NO SHARING IN COMPENSATION.**—No Government employee shall share in any compensation received by another person for assistance which such Government employee is prohibited from rendering pursuant to subsection (a) or (b).

(d) **PARTNERSHIPS.**—No partnership of which a Government employee is a partner, and no partner or employee of such a partnership, shall assist another person in any transaction involving the Government if such Government employee is prohibited from doing so by subsection (a).

(e) **PERMITTING EXCEPTIONS.**—(1) Nothing in this section shall prevent a Government employee, subject to conditions or limitations set forth in regulations issued pursuant to section 10, from assisting, in a transaction involving the Government—

(A) his parent, spouse, or child, or any thereof for whom he is serving as guardian, executor, administrator, trustee or other personal fiduciary;

(B) a person other than his parent, spouse, or child for whom he is serving as guardian, executor, administrator, trustee, or other personal fiduciary;

(C) another Government employee involved in disciplinary, loyalty, or other personnel administration proceedings; or

(D) another person in the performance of work under a contract with or for the benefit of the United States:

Provided, however, That—

(E) in the case of clauses (A) and (B), such Government employee shall not have at any time participated in such transaction, nor, in the case of clause (B), shall such transaction have been under his official responsibility; and

(F) in the case of clauses (A), (B), (C), and (D), the circumstances of the assistance shall have been disclosed to the head of the employee's agency and approved by him in advance of the assistance; and

(G) in the case of clause (D), the head of such employee's agency shall have certified in writing that in his opinion the national interest will be promoted by permitting the special knowledge or skills of such Government employee to be made available to assist such other person in connection with such performance.

(2) Nothing in this section shall prevent a Government employee from giving testimony under oath or from making statements required to be made under penalty of perjury or contempt.

§ 5. Compensation for regular Government employees from non-Government sources

(a) UNCOMPENSATED EMPLOYEES.—For purposes of this section the term “regular Government employee” shall not include any Government employee who, in accordance with the terms of his appointment, is serving without compensation from the United States or is receiving from the United States only reimbursement of expenses incurred or a predetermined allowance for such expenses.

(b) PAYMENTS FOR SERVICES TO THE UNITED STATES.—No regular Government employee shall receive any thing of economic value, other than his compensation from the United States, for or in consideration of personal services rendered or to be rendered to or for the United States. Any thing of economic value received by a regular Government employee prior to or subsequent to his Government employment shall be presumed, in the absence of a showing to the contrary by a clear preponderance of evidence, not to be for, or in consideration of, personal services rendered or to be rendered to or for the United States.

(c) COMPENSATION FOR SERVICES TO OTHERS.—No regular Government employee shall receive any thing of economic value (other than his compensation from the United States) in consideration of personal services rendered, or to be rendered, to or for any person during the term of his Government employment unless such services meet each of the following qualifications:

(1) The services are bona fide and are actually performed by such employee;

(2) The services are not within the course of his official duties;

(3) The services are not prohibited by section 4 or by applicable laws or regulations governing non-Government employment for such employee; and

(4) The services are neither performed for nor compensated by any person from whom such employee would be prohibited by section 6(b) from receiving a gift; or, alternatively, the services and compensation are fully disclosed in writing to the head of the employee's agency and are approved in writing by him.

(d) PAYMENTS FOR FUTURE SERVICES TO OTHERS.—No regular Government employee shall receive, directly or indirectly, any thing of economic value during the term of his Government employment in consideration of personal services to be rendered to or for any person subsequent to the term of such employment. Nothing contained in this subsection (d) shall be deemed to prevent a Government employee from entering into a contract for prospective employment during the term of his Government employment.

(e) COMPENSATION FROM LOCAL GOVERNMENTS.—Nothing contained in this section shall prevent a Government employee from receiving compensation contributed out of the treasury of any State, county, or municipality if—

(1) the compensation is received pursuant to arrangements entered into between such State, county, or municipality and such employee's agency; or

(2) the compensation and the services for which it is received are fully disclosed in writing to the head of the employee's agency and are approved in writing by him.

(f) CONTINUATION IN CERTAIN PENSION AND OTHER PLANS.—(1) Nothing contained in this section shall prevent a Government employee's continuation in a bona fide pension, retirement, group life, health, or accident insurance, or other employee welfare or benefit plan maintained by a former employer but to which such former employer makes no contributions on behalf of such employee in respect of the period of his Government employment.

(2) Nothing contained in this section shall prevent a Government employee's continuation in a bona fide plan, maintained by a former employer and to which such former employer makes contributions on behalf of such employee, in the case of—

(A) a pension or retirement plan qualified under the provisions of the Internal Revenue Code, or

(B) a group life, health, or accident insurance plan: *Provided*, That the contributions by such employer are not made for a period longer than five consecutive years of Government employment (or an aggregate of five years out of the preceding ten).

(3) Nothing contained in this section shall require the termination of the rights of a Government employee acquired under a bona fide profit-sharing or stock bonus plan maintained by a former employer and qualified under the provisions of the Internal Revenue Code: *Provided*, That no contributions are made

by such former employer on behalf of the Government employee based on profits attributable to any portion of the period of his Government employment.

(4) The provisions of this subsection (f) shall be subject to any additional conditions or limitations, including limitations on maximum amounts, set forth in regulations issued pursuant to section 10.

§ 6. Gifts

(a) **GENERAL RULE FOR ALL EMPLOYEES.**—No Government employee shall receive, accept, take, seek, or solicit, directly or indirectly, any thing of economic value as a gift, gratuity, or favor from any person if such Government employee has reason to believe the donor would not give the gift, gratuity, or favor but for such employee's office or position within the Government.

(b) **ADDITIONAL GENERAL RULE FOR REGULAR EMPLOYEE.**—No regular Government employee shall receive, accept, take, seek or solicit, directly or indirectly, any thing of economic value as a gift, gratuity, or favor from any person, or from any officer or director of such person, if such regular Government employee has reason to believe such person—

(1) has or is seeking to obtain contractual or other business or financial relationships with such employee's agency; or

(2) conducts operations or activities which are regulated by such employee's agency; or

(3) has interests which may be substantially affected by such employee's performance or nonperformance of official duty.

(c) **PERMITTED EXCEPTIONS.**—Exceptions to subsections (a) and (b) may be made by regulations issued pursuant to section 10 in situations where the circumstances do not lead to the inference that the official judgment or action of the Government employee receiving, directly or indirectly, the gift, gratuity, or favor was intended to be influenced thereby.

§ 7. Abuse of office

Except in the course of his official duties or incident thereto, no Government employee shall, in his relationships with any person specified in the succeeding sentence, use the power or authority of his office or position within the Government in a manner intended to induce or coerce such other person to provide such Government employee or any other person with any thing of economic value, directly or indirectly. This section shall apply to relationships with any person, or any officer or director of such person, from whom such Government employee, if he were a regular Government employee, would be prohibited by section 6(b) from receiving a gift.

§ 8. Postemployment

(a) **GENERAL RULE.**—No former Government employee shall at any time subsequent to his Government employment assist another person, whether or not for compensation, in any transaction involving the Government—

(1) in which he at any time participated during his Government employment; or

(2) if such transaction involving the Government was under his official responsibility as a Government employee at any time within a period of two years preceding such assistance.

(b) **NO SHARING IN COMPENSATION.**—No former Government employee shall share in any compensation received by another person for assistance which such former Government employee is prohibited from rendering by subsection (a).

(c) **PARTNERSHIPS.**—(1) No partnership of which a former Government employee is a partner, and no partner or employee of such a partnership, shall, for a period of two years following the termination of his Government employment, assist another person in any transaction involving the Government in which such former Government employee at any time participated during his Government employment. For purposes of this subsection (c) (1), the termination of the former Government employee's employment with the agency by which he was employed when he so participated shall be deemed to be the termination of his Government employment.

(2) Whenever subsection (c) (1) would be applicable but for the expiration of the period of two years referred to therein, the circumstances of the former Government employee's participation in the transaction during his Government employment, if the individuals acting for the partnership are aware of such participation, shall be disclosed to the agency principally involved in the trans-

action involving the Government, and an affidavit of such former employee to the effect that he has not assisted in such transaction involving the Government shall be furnished to such agency.

(d) SPECIAL RULE FOR COMPUTATION OF TWO-YEAR PERIOD FOR CERTAIN FORMER INTERMITTENT EMPLOYEES.—For purposes of this section, a former intermittent Government employee whose employment terminated under clause (iii) of section 2(g) shall be deemed to have terminated such employment on the last working day on which he performed services as an intermittent Government employee.

(e) PERSONS FORMERLY ON ACTIVE DUTY AS COMMISSIONED OFFICERS OF ARMED FORCES.—The President shall, in furtherance of this section 8, issue regulations of the nature herein described applicable to persons who have been commissioned officers on active duty in one of the armed forces of the United States. Such regulations shall have the effect of prohibiting such persons, for the periods therein specified, from personally dealing with personnel of the Department of Defense, or of such units thereof as may be specified in such regulations, with the purpose of assisting in the sale of anything, including services, to the United States through the Department of Defense or such units thereof as may be specified in such regulations. The retirement pay of any retired commissioned officer who violates such regulations shall be terminated pursuant to the regulations issued hereunder for the periods therein specified.

(f) PERMITTED EXCEPTIONS.—The permitted exceptions, applicable to Government employees under section 4 (e) shall also be applicable to former Government employees under this section 8, subject to conditions or limitations set forth in regulations issued pursuant to section 10. For purposes of this section 8, references in such section 4(e) to the Government employee providing assistance shall be deemed to be to the former Government employee, and references to his agency shall be deemed to be to his former agency.

§ 9. Illegal payments

(a) PAYMENTS AS COMPENSATION, ETC.—No person shall give, pay, loan, transfer, or deliver, directly or indirectly, to any other person any thing of economic value believing or having reason to believe that there exist circumstances making the receipt thereof a violation of section 4, 5, or 8.

(b) GIFTS.—No person shall give, transfer, or deliver, directly or indirectly, to a Government employee any thing of economic value as a gift, gratuity, or favor if either—

(1) such person would not give the gift, gratuity, or favor but for such employee's office or position within the Government; or

(2) such person is in a status specified in clause (1), (2), or (3) of section 6(b).

Exceptions to this subsection (b) may be made by regulations issued pursuant to section 10 in situations referred to in section 6(c).

§ 10. Administration

(a) RESPONSIBILITY OF THE PRESIDENT.—(1) The President shall be responsible for the establishment of appropriate standards to protect against actual or potential conflicts of interest on the part of Government employees and for the administration and enforcement of this Act and the regulations and orders issued hereunder.

(2) The President may, and shall do so when required by this Act, issue regulations implementing or interpreting the provisions of this Act. Such regulations shall take precedence over any regulations issued by agency heads pursuant to subsection (c).

(3) The President shall have particular responsibility for the enforcement of this Act as applied to employees of the Executive Office of the President and to agency heads, and for this purpose the President shall have all the powers of an agency head.

(4) The President may conduct investigations of facts, condition or conditions, practices, or other matters in carrying out his responsibilities and powers under this subsection (a) and in obtaining information to serve as a basis for recommending further legislation related to the purposes of this Act. In connection with any such investigation the President shall have all the powers with respect to oaths, affirmations, subpoenas, and witnesses as are provided in section 12(b) (2). The President may delegate any or all of his powers under this subsection (a) (4) to the Administrator referred to in subsection (b) or to others, either generally or in particular instances.

(b) EXECUTIVE CONFLICT OF INTEREST ACT ADMINISTRATOR.—(1) The President shall designate an official from within the Executive Office of the President or create an office within the Executive Office of the President (such official or the head of such office being hereinafter referred to as the "Administrator") to perform the following functions:

(A) To assist the President in carrying out his responsibilities under subsection (a);

(B) To receive copies of all regulations issued by agency heads pursuant to subsection (c), to analyze the same and make recommendations to agency heads with respect thereto;

(C) To receive reports from agencies and to collect information with respect to, and conduct studies of, personal conflicts of interest of Government employees within the executive branch;

(D) To consult with the Attorney General, the Chairman of the Civil Service Commission, the Comptroller General and other appropriate officials with respect to conflict-of-interest matters affecting more than one agency;

(E) To consult with agency heads, and with appropriate officers designated by them, as to the administration of this Act within their respective agencies and regulations issued hereunder applicable to their respective agencies;

(F) To give advice with respect to the application of this Act and regulations issued hereunder, when so requested by the President or agency heads;

(G) To undertake and conduct, in conjunction with agency heads, a study of the extent to which any of the principles of this Act should be made applicable to persons and to the employees of persons having contracts, subcontracts, licenses, or similar relationships with or from the United States; and

(H) To provide reports and information to the President and the Congress concerning the administration of this Act and conflict-of-interest matters generally.

(2) The Administrator is authorized to employ personnel and expend funds for the purposes of this Act, to the extent of any appropriations made for the purposes hereof.

(c) RESPONSIBILITY OF AGENCY HEADS.—(1) Each agency head shall be responsible for the establishment of appropriate standards within his agency to protect against actual or potential conflicts of interest on the part of employees of his agency, and for the administration and enforcement within his agency of this Act and the regulations and orders issued hereunder.

(2) Each agency head may, subject to the regulations issued by the President under subsection (a) (2), issue regulations extending, supplementing, implementing, or interpreting the provisions of this Act as applied to his agency. He shall file copies of all such regulations with the Administrator.

(3) Each agency head may conduct investigations of facts, conditions, practices, or other matters in carrying out his responsibilities and power under this subsection (c). In connection with any such investigation the agency head shall have all the powers with respect to oaths, affirmations, subpoenas, and witnesses as are provided in section 12(b) (2). The agency head may delegate any or all of his powers under this subsection (c) (3) to any officer designated by him, either generally or in particular instances.

§ 11. Preventive measures

The head of an agency may, and shall do so if so provided in regulations issued by the President, require—

(a) individuals entering Government employment with such agency and, periodically, the employees or particular categories of employees of such agency, to sign a statement that they have read an appropriate summary of the rules established by this Act and the regulations issued hereunder;

(b) employees of such agency, or particular categories thereof, to report periodically as to their non-Government employment or self-employment, if any;

(c) representatives of other persons before an agency to certify that, to the best of their knowledge, their representation will not violate section 4 or 8 or the regulations issued thereunder; and

(d) persons who are principals in transactions involving the Government to certify that, to the best of their knowledge, they have not received assistance under circumstances which would violate section 4 or 8 or the regulations issued thereunder.

§ 12. Remedies; civil penalties; procedure**(a) ADMINISTRATIVE ENFORCEMENT AS TO CURRENT GOVERNMENT EMPLOYEES.—**

(1) Remedies and Civil Penalties: The head of an agency may dismiss, suspend, or take such other action as may be appropriate in the circumstances in respect of any Government employee of his agency upon finding that such employee has violated this Act or regulations promulgated hereunder. Such action may include the imposition of conditions of the nature described in subsection (b) (1).

(2) Procedure: The procedures for any such action shall correspond to those applicable for disciplinary action for employee misconduct generally, and any such action shall be subject to judicial review to the extent provided by law for disciplinary action for misconduct of employees of the same category and grade.

(b) ADMINISTRATIVE ENFORCEMENT AS TO FORMER GOVERNMENT EMPLOYEES AND OTHERS.—

(1) Remedies and Civil Penalties: The head of an agency, upon finding that any former employee of such agency or any other person has violated any provision of this Act, may, in addition to any other powers the head of such agency may have, bar or impose reasonable conditions upon—

(A) the appearance before such agency of such former employee or other person, and

(B) the conduct of, or negotiation or competition for, business with such agency by such former employee or other person, for such period of time as may reasonably be necessary or appropriate to effectuate the purposes of this Act.

(2) Procedure:

(A) Hearings.—Findings of violations referred to in subsection

(b) (1) shall be made on the record after notice and hearing, conducted in accordance with the provisions governing adjudication in title 5, United States Code, secs. 1005, 1006, 1007, 1008, and 1011 (Administrative Procedure Act). For the purposes of such hearing any agency head, or any officer designated by it, is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which the agency head finds relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States at any designated place of hearing. Witnesses summoned by the agency head to appear shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(B) Judicial review.—(i) Any party to a proceeding under this subsection (b) aggrieved by an order issued by the agency head pursuant hereto, may obtain a review of such order in the court of appeals of the United States for any circuit wherein said party is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court within sixty days after the order of the agency upon a written petition praying that such order be modified or set aside in whole or in part.

(ii) A copy of such petition shall forthwith be transmitted by the clerk of the court to the agency head involved, and thereupon such agency head shall file with the court the record upon which the order complained of was entered. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part.

(iii) No objection to the order of the agency head shall be considered by the court unless such objection shall have been urged before the agency or there is reasonable ground for failure to do so.

(iv) The findings of the agency head as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material in that there were reasonable grounds for failure to adduce such evidence in the proceedings before the agency, the court may order such addi-

tional evidence to be taken before the agency and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper.

(v) The agency head may modify his findings as to the facts by reason of the additional evidence so taken and shall file with the court such modified or new findings which, if supported by substantial evidence, shall be conclusive, and his recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside in whole or in part, any such order of the agency head, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 346 and 347 of title 28. The commencement of proceedings for review under this subsection shall not, unless specifically ordered by the court, operate as a stay of the agency head's order.

(c) **RESCISSION OF GOVERNMENT ACTION.**—The President or any agency head may cancel or rescind any Government action without contractual liability to the United States where—

(1) he has found that a violation of this Act has substantially influenced such Government action; and

(2) in his judgment the interests of the United States so require under all of the circumstances, including the position of innocent third parties.

The finding referred to in clause (1) shall be made in accordance with the procedures set forth in subsection (b) (2) and shall be subject to judicial review in accordance with the provisions of subsection (b) (2) (B): *Provided*, That the President or such agency head may suspend Government action pending the determination, pursuant to this subsection, of the merits of the controversy. The exercise of judgment pursuant to clause (2) of this subsection shall not be subject to judicial review.

(d) **CIVIL REMEDY FOR DAMAGES AGAINST EMPLOYEES AND FORMER EMPLOYEES.**—The Attorney General of the United States may bring a civil action in any district court of the United States against any Government employee or former Government employee who shall, to his economic advantage, have acted in violation of this Act, and in such action may recover on behalf of the United States, in partial reimbursement of the United States for its expenses of administering this Act, damages in an amount equal to three times the amount of such economic advantage.

(e) **CIVIL PENALTIES FOR ILLEGAL PAYMENTS.**—Any person who shall violate section 9 shall pay a civil penalty of not more than \$5,000, in partial reimbursement of the United States for its expenses of administering this Act. The Government employee or former Government employee involved shall not be subject to prosecution under title 18, United States Code, section 2, or title 18, United States Code, section 371, or any other provision of law dealing with criminal conspiracy, by reason of the receipt of any such payment.

(f) **PUBLICATION OF CERTAIN FINDINGS AND DECISIONS.**—Whenever the head of any agency, or the President, exercises the authority conferred by subsections (a), (b), or (c) of this section, copies of the findings and decision therein shall be filed with the President and shall be published at least once each year as part of a volume collecting such findings and opinions. Such volumes shall be made available for public inspection and shall also be made available for distribution or sale to interested persons.

(g) **INTERESTS OF NATIONAL SECURITY.**—When any provision of this Act requires publication of information and the President finds that publication of part or all of such information is inconsistent with national security, he may suspend the requirement of such publication to the extent and for such period of time as he shall deem essential for reasons of national security.

(h) **STATUTE OF LIMITATIONS.**—No administrative or other action under subsections (b), (c), (d), or (e) of this section to enforce any provision of this Act shall be commenced after the expiration of six years following the occurrence of the alleged violation.

TITLE II—CRIMINAL PENALTIES

§ 21. Acts in violation of Executive Conflict of Interest Act

Title 18 of the United States Code is amended by adding a new chapter thereto, to be designated chapter 16 and reading as follows:

"CHAPTER 16—CONFLICTS OF INTEREST

"§ 301. Acts in violation of Executive Conflict of Interest Act

"Any person who shall purposely or knowingly violate any provision of the Executive Conflict of Interest Act shall be fined not more than \$10,000, or imprisoned for not more than one year, or both. For purposes of this section, the terms 'purposely' and 'knowingly' shall have the respective means set forth in subsections (a) and (b):

"(a) 'Purposely': A person acts purposely with respect to a material element of an offense when—

"(1) if the element involves the nature of his conduct or a result thereof, it is his conscious object to engage in conduct of that nature or to cause such a result; and

"(2) if the element involves the attendant circumstances, he knows of the existence of such circumstances.

"(b) 'Knowingly': A person acts knowingly with respect to a material element of an offense when—

"(1) if the element involves the nature of his conduct or the attendant circumstances, he knows that his conduct is of that nature or he knows of the existence of such circumstances; and

"(2) if the element involves a result of his conduct, he knows that his conduct will necessarily cause such a result."

TITLE III—AMENDMENT AND REPEAL OF EXISTING LAWS

§ 31. Amendment of title 18, United States Code, sections 216 and 1914

Section 216 of chapter 11 and section 1914 of chapter 93 of title 18 of the United States Code are each amended by adding the following as a new paragraph to precede the present text of each new section:

"From and after the effective date of the Executive Conflict of Interest Act, this section shall not apply to (1) any person who is a Government employee as defined in section 2(f) of that Act, and (2) any act of another person which is directed toward such a Government employee."

§ 32. Amendment of title 18, United States Code, sections 281, 283, and 434

Sections 281 and 283 of chapter 15 of title 18 of the United States Code are each amended by deleting the second paragraph thereof. Each of such sections is further amended and section 434 of chapter 23 of title 18 of the United States Code is amended by adding the following as a new paragraph to precede the present text of each such section:

"From and after the effective date of the Executive Conflict of Interest Act, this section shall not apply to any person who is a Government employee as defined in section 2(f) of that Act."

§ 33. Amendment of title 18, United States Code, section 284

Section 284 of chapter 15 of title 18 of the United States Code is amended by adding the following as a new paragraph to precede the present text of such section:

"From and after the effective date of the Executive Conflict of Interest Act, this section shall not apply to any person who has been a Government employee as defined in section 2(f) of that Act."

§ 34. Amendment of title 22, United States Code, section 1792(a)

Section 532(a) of the Mutual Security Act of 1954 (68 Stat. 859), as amended by section 10(d) of the Act of July 18, 1956 (70 Stat. 561; 22 U.S.C. 1792(a)), is amended to read as follows:

“(a) Service of an individual as a member of the Board established pursuant to section 308 of this Act or as an expert or consultant under section 530(a) shall not be considered as employment or holding of office or position bringing such individual within the provisions of section 6 of the Act of May 22, 1920 (5 U.S.C. 715), or section 212 of the Act of June 30, 1932 (5 U.S.C. 59a), or any other Federal law limiting the reemployment of retired officers or employees or governing the simultaneous receipt of compensation and retired pay or annuities. Contracts for the employment of retired military personnel with specialized research and development experience, not to exceed ten in number, as experts or consultants under section 530(a), may be renewed annually, notwithstanding section 15 of the Act of August 2, 1946 (5 U.S.C. 55(a)).”

§ 35. Amendment of title 5, United States Code, section 30r(d)

Section 29(d) of the Act of August 10, 1956 (70A Stat. 632; 5 U.S.C. 30r(d)), is amended to read as follows:

“(d) When he is not on active duty, or when he is on active duty for training, a reserve is not considered to be an officer or employee of the United States or a person holding an office of trust or profit or discharging any official function under, or in connection with, the United States because of his appointment, oath, or status, or any duties or functions performed or pay or allowances received in that capacity: *Provided, however,* That a reserve on active duty for training shall be deemed an employee of the United States for purposes of the Executive Conflict of Interest Act.”

§ 36. Repeal of particular substantive restraints

The following sections are repealed:

- (a) Section 190 of the Revised Statutes (5 U.S.C. 99) (relating to postemployment prosecution of claims by employees in departments); and
- (b) Section 244 of the Revised Statutes (5 U.S.C. 254) (relating to certain business interests of clerks in the Treasury Department).

§ 37. Repeal of particular substantive restraints applicable to retired officers

The following sections are repealed:

- (a) Section 1309 of the Act of August 7, 1953 (67 Stat. 437; 6 U.S.C. 59c) (relating to loss of retirement pay by retired commissioned officers engaged in certain selling activities).
- (b) Section 6112 of chapter 557 of title 10 of the United States Code (relating to the loss of pay or retirement pay by certain officers who sell naval supplies to the Navy Department).

§ 38. Repeal of exemptions from particular conflict-of-interest statutes

The following sections are repealed:

- (a) Section 173(c) of chapter 7 of title 10 of the United States Code (providing certain conflicts exemptions for advisers to the Secretary of Defense).
- (b) Section 1583(b) of chapter 81 of title 10 of the United States Code (authorizing conflicts exemptions for persons employed by the Secretary of Defense to serve without compensation).
- (c) Section 5153(d) of chapter 513 of title 10 of the United States Code (providing certain conflicts exemptions for members of the Naval Research Advisory Committee).
- (d) Section 807 of the Act of August 2, 1954 (68 Stat. 645; 12 U.S.C. 1701h) (providing certain conflicts exemptions for members of advisory committees of the Housing and Home Finance Agency).
- (e) Section 5 of the Act of June 4, 1956 (70 Stat. 243; 16 U.S.C. 934) (providing certain conflicts exemptions for commissioners and members of advisory committees appointed under the Great Lakes Fishery Act of 1956).
- (f) Section 5 of the Act of September 7, 1950 (64 Stat. 778; 16 U.S.C. 954) (providing certain conflicts exemptions for commissioners and members of advisory committees appointed under the Tuna Conventions Act of 1950).
- (g) Section 5 of the Act of September 27, 1950 (64 Stat. 1068; 16 U.S.C. 984) (providing certain conflicts exemptions for commissioners and members of advisory committees appointed under the Northwest Atlantic Fisheries Act of 1950).
- (h) Section 5 of the Act of August 12, 1954 (68 Stat. 698; 16 U.S.C. 1024) (providing certain conflicts exemptions for commissioners and members of advisory committees appointed under the North Pacific Fisheries Act of 1954).
- (i) Section 1003 of the Act of September 2, 1958 (72 Stat. 1603; 20 U.S.C.

583) (providing certain conflicts exemptions for members of advisory committees and information councils appointed under the National Defense Education Act of 1958).

(j) Section 14(f) of the Act of May 10, 1950 (64 Stat. 154155; 42 U.S.C. 1873 (f)) (providing certain conflicts exemptions for members of the National Science Board and committees and commissions appointed under the National Science Foundation Act of 1950).

(k) Section 163 of the Atomic Energy Act of 1954 (68 Stat. 951), as amended by section 2 of the Act of September 21, 1959 (73 Stat. 574; 42 U.S.C. 2203) (providing certain conflicts exemptions for members of the General Advisory Committee and advisory boards appointed under the Atomic Energy Act of 1954).

(l) Section 1(t) of the Act of June 19, 1951 (65 Stat. 87; 50 U.S.C. App. 463(a)) (providing certain conflicts exemptions for particular Selective Service officials).

(m) Section 113 of the Renegotiation Act of 1951 (65 Stat. 22), as amended by section 13 of the Act of August 1, 1956 (70 Stat. 792; 50 U.S.C. App. 1223) (providing certain conflicts exemptions for employees of departments and agencies to which the Renegotiation Act of 1951 is applicable and of the Renegotiation Board).

(n) Section 7(b)(4) of the Act of August 9, 1955 (69 Stat. 582; 50 U.S.C. App. 2160(b)(4)) (providing certain conflicts exemptions for persons serving without compensation under the Defense Production Act of 1950).

TITLE IV—MISCELLANEOUS PROVISIONS

§ 41. Short title

This Act shall be known and may be cited as the "Executive Conflict of Interest Act".

§ 42. Effective date

This Act shall take effect ninety days after the date of its enactment, except that section 37 shall not take effect until the effective date of the regulations issued by the President pursuant to section 8(e).

[S. 637, 87th Cong., 1st sess.]

A BILL To amend the Administrative Procedure Act to provide for the disclosure of certain communications received by Government agencies from Members of Congress with respect to adjudicatory matters, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5 of the Administrative Procedure Act (5 U.S.C. 1004) is amended by adding at the end thereof the following new subsection:

"(e) COMMUNICATIONS TO AGENCY.—Whenever any matter is pending before any agency for adjudication, and any communication with respect to the status, disposition, or merits thereof is received by such agency from any Member of Congress the agency shall make such communication, or a true and correct copy thereof, together with a true and correct copy of any response made thereto by the agency, a part of the public record of such adjudicatory proceeding. The true and correct substance of any oral communication received by any agency from any Member of Congress, and the true and correct substance of any oral response made by any agency to any communication received from any Member of Congress, with respect to the status, disposition, or merits of any such adjudicatory matter, shall be reduced to writing by any member, officer, or employee thereof who receives such communication or responds thereto, and such writing shall be treated as a written communication received by any agency, or a written response made by the agency thereto, as the case may be; and, in addition thereto, a copy thereof shall be sent to the Member of Congress concerned. As used in this subsection—

"(1) The term 'agency' includes any member, officer, or employee of any agency; and

"(2) The term 'Member of Congress' includes (A) any Delegate to Congress or Resident Commissioner in Congress, (B) any employee of any Member of Congress, Delegate to Congress, or Resident Commissioner in Congress, and (C) any employee of any joint committee of the Congress or any committee of either House of the Congress."

Senator JAVITS. To sum it up, Mr. Chairman, I make the following points:

First, a bill reported out should include a provision for communications to Government agencies by Members of Congress and in that I refer to S. 637, which has, been incorporated.

Second, H.R. 8140 to be confined to the executive department, and there should be a separate title for Members of Congress with important consideration given by this committee to the need for maintaining the independence and integrity of the Congress in respect of a code of ethics by advising the administration of a code and its enforcement in the Congress itself.

Third, the need for administrative procedures as well as criminal sanctions in the law.

And, fourth, my endorsement of the particular recommendations made by the Association of the Bar of a specific character to which I referred by section in respect of H.R. 8140.

Senator HRUSKA. To what committee was Senate Concurrent Resolution 10 referred?

Senator JAVITS. Senate Concurrent Resolution 10 was referred to the Committee on Rules and Administration. And, as is customary here, Mr. Chairman, I believe that by arrangement between the committees if it is considered desirable the subject could very easily be handled by you in this bill.

Senator HRUSKA. Does that conclude your statement?

Senator JAVITS. It concludes my statement.

Senator HRUSKA. Thank you very much for coming. The information you have given us will be very helpful.

At this point in the record there will be inserted a letter from the Department of Health, Education, and Welfare dated June 21, 1962. (The letter referred to is as follows:)

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
June 21, 1962.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This report is in regard to H.R. 8140, a bill to strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes, as passed by the House of Representatives, and now before your committee.

The following comments are addressed to those aspects of the bill that could have a substantial impact on the program interests of this Department.

The bill's proposed section 203 of title 18, United States Code, would bar a special Government employee who serves as such for more than 15 days during a 1-year period, from receiving compensation for services rendered in relation to a matter in which the United States is a party or has a direct and substantial interest, and which is pending in the agency in which the employee is serving.

Similarly, such employees would be barred by the proposed section 205 from acting as agents before the agency, whether or not for compensation, in matters pending before it during their employment.

We believe that this disability is needlessly severe, and would hamper the Department in obtaining and retaining the services of eminent physicians, scientists, and educators as members of its advisory committees. In the Public Health Service, for example, there are 14 public advisory committees established by statute or pursuant to statutory direction. Including the members of over 150 additional advisory committees, the Public Health Service employs some 1,800 consultants. Many of these consultants serve the Department for more than 15 days each year. Among those who serve more than 15 days, particularly of those who are utilized by the National Institutes of Health, some are

or may expect to be employed on matters pending before the Department during the period for which they have made themselves available for service as a special Government employee. For example, in the field of medical research funds used or supplied by the National Institutes represent 43 percent of the Nation's entire medical research support from all sources. Therefore, in view of the limited number of capable scientists, it is not unlikely that a research scientist who is a member of, say, the National Advisory Health Council will, during his membership, be called upon to conduct research with funds supplied to his university for this purpose by NIH under a continuing grant which is renewable from time to time, and therefore still before the agency. If the conduct of such research by advisory council members were to be prohibited, the practical consequences would be the refusal of any scientists to accept appointments to our advisory councils, with a consequent deterioration of the councils' work.

A related problem is that of the university official who is a member of an advisory council that is charged with the responsibility of recommending action to the Surgeon General on a grant application from the school of which the official may be dean, president, or agent for such matters. The current practice is for the official to disqualify himself from participating in the Council's decision on such application. Under H.R. 8140, such official would be barred from acting as an adviser or consultant to the Department (whether or not as a Council member) for more than 15 days during the preceding 365 consecutive days, if such grant application were pending before the Department. Here, again, as a practical matter this circumstance would cause many of the most able and responsible persons to decline Council membership.

The bill would also prevent certain Advisory Council members from engaging in scientific work in areas wholly unrelated to their official duties—for example, work in relation to a new drug application before the Food and Drug Administration—although in reality there would be no opportunity whatsoever for any member to gain confidential information or other benefits from his employment as a Council member that could aid him in such scientific work.

Our discussion of these problems has assumed that the proposed section 202(a) would classify a member of an advisory committee as a "special Government employee" for the entire period of his appointment. This would alter the general approach of existing law, as interpreted by the President's "Memorandum of February 9, 1962" (27 F.R. 1341 and 1342), which treats consultants and advisers as Government employees only on those days on which they are actually employed by the Government, except for those whose Government employment during the period of their availability occupies a substantial portion of that period (administratively determined to be 40 percent or more) or affords their principal means of livelihood.

We agree that a special Government employee should be barred during the entire period of his availability for Government service (e.g., the period of his membership on any advisory council) from acting privately in relation to a particular matter in which, as a Government employee, he has at any time personally participated, or which has been a subject of his official responsibility within 2 years. Even if this bar were not found in section 203 or section 205 (and these sections should certainly be clarified in this regard either by amendment or through legislative history) it would follow from the limitations placed by section 207 on the activities of former Government employees. However, insofar as possible conflicts of interests may be involved, we see no need to prohibit a special Government employee from participating in his private capacity in matters pending before the agency that do not bear upon or affect his official functions. We would therefore delete the provisions in sections 203 and 205 which prohibit a special Government employee who serves more than 15 days each year from participating in a particular matter solely because it is pending before his agency.

If this recommendation is unacceptable, then we urge that the 15-day period referred to be raised. The increase to 60 days, which we understand is being recommended by the Department of Justice would be adequate to except from this bar members of our advisory councils.

A further problem is raised by the proposed section 207. Under existing law (18 U.S.C. section 234 and 5 U.S.C. 99) a former employee of the United States is prohibited, for 2 years from the termination of his employment, from acting as agent or attorney in the prosecution of any claim against the Government involving any subject matter directly connected with his former employment, or

pending in any department during such employment. The bill would replace these prohibitions with, among other things, a lifetime ban upon the performance of services, by such former employee, as agent or attorney in connection with virtually any specific activity in which the United States has a direct and substantial interest and in which the employee participated personally and substantially during his employment.

One consequence of broadening the class of prohibited activities is to obscure, in some degree, the meaning of the word "agent." It is not entirely clear, for example, that a former Government officer or employee would be able to assist, after termination of his Federal employment, in the performance of work under a Government grant or contract upon which he advised in his official capacity.

While this result may be desirable in the generality of cases in order to assure that the performance of Government functions will not be improperly influenced by the expectation of future employment (see, for example, the proposed section 201, which would punish an employee who was influenced in the performance of an official act by the promise of such employment), it is likely to injure the Government, particularly in view of the lifetime character of the prohibition, in occasional cases in which highly specialized medical or other scientific research is contracted for, or promoted by grant, and a member of an NIH advisory council, or a regular Government employee, who dealt with the grant or contract in his official capacity, is at some later date desired by the recipient for employment on the research. For example, in the highly specialized field of mycology (the study of molds and fungi), one of very few experts in the United States is a member of the National Advisory Allergy and Infectious Disease Council; in the equally specialized field of the viral etiology of cancer, one of the leading experts is a member of the National Advisory Cancer Council. It would be in the interests of the Government, in such cases, to afford these experts the opportunity to administer or participate in research programs in respect to which they had had official functions, provided that it clearly appears that the performance of those functions was not influenced by the prospect of such employment, and that such employment was in the interests of the Government. We defer to the Department of Justice, which we understand will propose amendments to your committee, on the appropriate means of resolving these and certain additional problems that the bill presents for us.

Subject to consideration of the Justice Department proposals, we recommend that the bill be enacted.

We are advised by the Bureau of the Budget that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely,

WILBUR J. COHEN,
Assistant Secretary.

Senator HRUSKA. A statement submitted by the Reserve Officers Association, will also be placed in the record at this point.

(The statement referred to is as follows:)

STATEMENT BY COL. JOHN T. CARLTON, EXECUTIVE DIRECTOR, RESERVE OFFICERS ASSOCIATION, TO THE SENATE JUDICIARY COMMITTEE ON H.R. 8140, AN ACT TO STRENGTHEN THE CRIMINAL LAWS RELATING TO BRIBERY, GRAFT, AND CONFLICTS OF INTEREST, AND FOR OTHER PURPOSES

Mr. Chairman and members of the committee, we appreciate the opportunity of presenting the views of this association on this important piece of legislation.

We will confine our remarks to the impact of this bill on military personnel in a reserve or retired status.

The House report on H.R. 8140 (Rept. 748, 87th Cong., 1st sess.) contains, on page 10, a short discussion on the status of retired officers and concludes that the bill should not change the status of personnel of this category even though the report admits that they are in a peculiar and complex position.

An attempt was made to clarify the difficult problem of these people when H.R. 11474 and H.R. 9682 (the so-called "Hébert bill") were being considered on the floor of the House in the 86th Congress. Those parts of the bill which would have included retired personnel in the provisions of sections 281 and 283 of title 13, United States Code, were stricken from the bills on a sustained point of order and a substitute clean bill (H.R. 10959) which excluded these people was passed by the House without debate or discussion on the

issue contained herein. H.R. 10959 subsequently died without action by the Senate.

As a consequence, military personnel, retired from the service after long and honorable careers, are very much in a quandary as to what their legal status is if they are to engage in activities which the bill before you takes into consideration. In justice to these highly motivated and qualified personnel, it would appear that these matters should be clarified as soon as possible. We believe this would be of direct and immediate benefit not only to the individuals, themselves, but to the organizations who might seek to employ them and the governmental activities with who they may have dealings. We believe that the simplest solution to this entire problem would be to include these people in the same general coverage as all other persons described as being within the purview of H.R. 8140.

For the foregoing reasons, we recommend that section 207 of title 18 of the United States Code be rewritten to make it clear that retired military personnel are subject to its provisions and to the other provisions of H.R. 8140 in the same manner as all others included in its coverage. We believe that the bill as presently written could be subject to varied interpretations. The use of specific language describing these persons would clarify this question when future interpretations are made.

To give further concrete effect to this recommendation, we recommend that that part of section 2 of the bill beginning on line 20 and ending on line 24 of page 20 which reads as follows "(except as they may apply to retired officers of the Armed Forces of the United States)" be deleted.

We further believe that two very important classes of persons have been omitted from the definition of the "special Government employee" as contained in the proposed section 202, title 18, United States Code, contained in the bill.

The first of these are those military personnel who are now on a 1-year tour of duty either voluntarily or involuntarily to augment the Armed Forces during the Berlin contingency.

These personnel, unless specifically exempted, will find in some cases that their tour of duty in support of national policy may inhibit them from pursuing business activities which are under the terms of this bill. We do not feel that these people, after having made the sacrifice that they have, should be subjected to this additional restriction in their private pursuits when they return to civilian life.

There is a smaller but rather significant group of military personnel who, because of their special qualifications or because of other peculiar circumstances, are called to duty from time to time for tours of duty to advise and assist the Armed Forces in specialized activities. These are not career personnel, but have special talents which are necessary to and of benefit to the armed services for short periods of time, but often in excess of 135 days. They often fulfill this duty at considerable sacrifice to their own professional careers and we believe they should not be penalized because of these activities.

For these reasons we believe that the definition of a "special Government employee" contained in section 202, title 18, United States Code, should be expanded to include "those military personnel called to active duty, voluntarily or involuntarily, under the provisions of Public Law 87-117, and those military personnel who served specified tours of active duty for the benefit of and funded by any of the armed services."

We believe that the changes proposed above will eliminate the various misunderstandings pertaining to reserve and retired military personnel engaged in activities within the purview of H.R. 8140 and be of direct benefit to themselves, their employers, and Government.

Senator HRUSKA. Senator Eastland has directed that we insert the following in the printed record: A letter and attachments addressed to him by the Honorable Henry M. Jackson, Senator from Washington, and a letter addressed to Senator Eastland from Judge William F. Smith of the Third Circuit Court of Appeals. The committee will recess, subject to the call of the Chair.

(The material referred to follows:)

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
June 23, 1962.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR JIM: As you know from our discussions and previous correspondence, H.R. 8140, the conflict-of-interest bill, is of interest to the Committee on Armed Services because of the use of the criminal provision as a guide in determining whether or not statutory nominees should be required to sell their securities in order to avoid a conflict of interest between their position and their personal holdings.

There has been an exchange of letters between myself and Mr. Katzenbach, the Deputy Attorney General, on the matter of this legislation as it pertains to the problem of the Senate Committee on Armed Services in connection with approval of statutory nominees.

I am attaching copies of the exchange of letters which I would appreciate your making a part of the printed hearings of last Thursday on H.R. 8140. The exchange could be useful legislative history in connection with any future use of the newly proposed language as a guide in connection with the confirmation matter.

Sincerely yours,

HENRY M. JACKSON.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., June 20, 1962.

Hon. HENRY M. JACKSON,
U.S. Senate, Washington, D.C.

DEAR SENATOR JACKSON: This is in response to your letter of May 16, 1962, with respect to H.R. 8140 and to the efforts being considered by the administration to meet by regulation the recruiting problems which are raised by 18 U.S.C. 434 (the section of the criminal law which prohibits officials from acting on behalf of the Government in dealings with business entities in which they have an interest). These problems also would be raised by section 208 of H.R. 8140, which would replace section 434. In your letter you emphasize the need for recruiting able individuals for service in the executive branch and request information on what administrative measures are being considered to alleviate the recruiting problem.

At the outset, I should like to assure you that your concern with the problem of obtaining the services of individuals from private life with varied abilities and talents is fully shared by the administration. This concern was emphasized in the President's April 27, 1961, special message to Congress on conflicts of interest and was reiterated in his memorandum to department and agency heads of February 9, 1962. The problem was also emphasized in the Attorney General's opinion of January 31, 1962. H.R. 8140 was drafted with a full realization of this factor and is intended to relieve the recruitment problem to the extent compatible with ethical standards. We agree with you, however, that enactment of the bill will not eliminate the need for administrative measures to deal with the problem.

Nor will enactment of the bill eliminate the undue financial burden sometimes imposed upon a Presidential nominee in circumstances in which divestiture of stockholding is considered appropriate before he takes office. Although the bill would not, in my opinion, aggravate this problem, its solution will have to be found elsewhere. In the meantime, the administration is actively exploring possible solutions of the divestiture problem. Some of the possibilities are discussed below.

The administration's concern with this problem and its intention to perform a "screening function" in relation to it was clearly contemplated by the President in his special message of April 27, 1961, to the Congress. In the discussion of ethics problems which could be dealt with directly by Presidential action, the President said in pertinent part:

"In carrying out the provisions of law, I will apply Government-wide standards to the continuance of property holdings by appointees to the executive

branch. The law prohibits any conflict of the public and private interest of employees of the Government. The Senate, in the exercise of its power of confirmation, has taken the lead in requiring that Presidential appointees sell their property holdings in cases where retention of property might result in such a conflict of interest. The problem of property ownership by Executive appointees is properly a matter of continuing congressional concern, and I welcome the initiative taken by the Jackson Subcommittee on Conflict of Interest. At the same time, the executive branch has an obligation to insure that its appointees live up to the highest standard of behavior. It is to carry out this responsibility that I will apply general standards governing the ownership of property by Presidential appointees—standards which will insure that no conflict of interest can exist. It is my hope that these regulations will aid the Senate in the uniform exercise of its own responsibility.”

The President, before making a nomination, will consider the financial interest of the person, and his spouse or minor child and will determine if they are of a nature which will create a conflict which would require disqualification of the person from his anticipated official duties. If any substantial interference with official duties is anticipated, the person being considered is not likely to be nominated in the absence of compelling reasons unless conflicting interests are divested or appropriate arrangements are made to insulate him from these interests. In any event, I can assure the committee that it will be fully informed of all relevant considerations of this nature and that the submission of a nominee's name will mean that his usefulness to the Government and the ethical considerations involved will have been given careful executive branch scrutiny.

The administration is, in addition, actively exploring methods of avoiding the imposition of undue financial burdens upon the prospective nominee or his family in those circumstances in which divestiture may be appropriate. Divestiture sometimes requires financial rearrangements which many individuals might hesitate to make in order to accept a Government appointment. Paramount among the divestiture problems is the tax consequence of a forced sale of securities, which may result in serious financial burdens or losses. The avoidance or minimizing of such consequences is a matter which the administration is investigating in an effort to find an equitable solution.

Possible methods of dealing with this problem which are being studied include a plan to permit the nominee to convert a security deemed objectionable into other securities without payment of a capital gains tax, if any should be due, but requiring him to assign to the new stock the cost basis of the old. Thus, upon any subsequent sale of the new securities, his gain for Federal income tax purposes would be the difference between the proceeds of the sale and the cost of the securities which he had converted upon his appointment to Federal office. Another plan would permit the nominee to report for income tax purposes only half the capital gain realized in the year of a forced divestiture if the entire amount of the proceeds were invested in other property. The other half of the gain would be used to reduce the cost basis of the newly acquired investment.

The examples given should not be considered to exhaust the potential means of providing relief from the harshest aspects of forced divestiture. Further careful study is required to assure that any plan recommended adequately serves the purpose for which it was intended, and the administration is not yet prepared to recommend any of the possible plans described above or any combination of them.

Your letter also expresses concern with the possibility that the prohibition contained in H.R. 8140 against participation by Government officials in transactions in which not only they themselves, but also their spouses and children, have a financial interest, may prove a hindrance to the Committee on Armed Services in approving Presidential nominees. Of course, section 208 does not concern itself with the qualifications of a nominee for office nor does it disqualify anyone for office. Like 18 U.S.C. 434, section 208 merely provides that a person in office shall not engage in certain activities which would create a conflict of interest. However, concern as to the effect of section 208 on the appointive process arises, as we understand it, because the committee considers situations which may arise under 18 U.S.C. 434 as one of its guides in determining the qualifications of a Presidential nominee. Section 434 purports to apply only to financial interests which are personal to the appointee and thus does not necessarily entail the more searching inquiry as to family holdings which might be thought to be required by the comparable but broader prohibition contained in section 208 of H.R. 8140.

To the extent it is considered relevant by the committee in passing on the qualifications of a Presidential nominee, I do not believe that section 208 would compel the committee to apply a substantially different test than it does under section 434 insofar as consideration of the financial interests of the nominee and his spouse or children is concerned. This opinion is based upon what I consider to be the meaning of the word "child" as used in section 208, the necessary implications arising from this interpretation and the likelihood that in most cases the holdings of a wife would be too remote or inconsequential to affect the integrity of the nominee.

When section 208 refers to a "child," I believe that the intent is to include only minor children. Once a child has reached his majority, he should no longer be regarded as possessing such a close relationship to his parents that a financial interest of his own would be of such consequence to a parent that it could affect the integrity of the services of a parent to the Government. Although there undoubtedly would be cases in which an emancipated child's interest would be of real consequence to his parents, it seems clearly inequitable to legislate such a broad concept of family unity as would be involved in including within section 208 a financial interest of a child who has reached his majority. While I do not think it is necessary, I would have no objection to an amendment to section 208 which would make express that the reference to "child" in the section means "minor child."

If it is accepted that section 208 refers only to minor children, then the committee, in passing upon the qualifications of a nominee, is confronted with a situation which is not very different from that which it would face if 18 U.S.C. 434 were its guide. I assume that normally the committee, relying upon section 434, would not consider from a conflict-of-interest viewpoint the financial interests of a spouse and minor child of a nominee. Although section 208 includes spouses and minor children, it permits exclusion from its coverage of interests which are not so substantial as to be likely to affect, or which are too remote or inconsequential to affect, the integrity of the service of an official. This exclusion, it seems to me, would rule out the property holdings of most spouses or minor children as financial interests which the committee might consider as possible subjects for divestiture. This would be particularly true with respect to the separate property of a spouse, which normally is not subject to any control or inter vivos property rights of his or her marriage partner.

In my opinion, only in an exceptional case would a financial interest of a spouse or child be deemed to be a disqualifying financial interest within the purview of section 208. Ownership by a spouse of a controlling interest in a corporation transacting business with the Department of Defense could not, perhaps, be ignored. Also, in a situation in which the nominee exercises legal control over the property of his spouse, the interest of the spouse could be considered a financial interest within the contemplation of section 208 unless excluded by the exception of nonsubstantial interests. However, such situations, in my opinion, would be the exception, rather than the rule. In the ordinary case, a property holding of a spouse or minor child would seem to come within the subsection (b) exclusion.

Accordingly, it seems to me that the committee would be justified in disregarding the property interests of a spouse or minor child except in unusual circumstances such as those to which I have referred. Since this, I believe, is essentially the procedure followed by the committee at the present time, it appears to me that enactment into law of section 208 would not create for the committee a standard significantly different from that prevailing under 18 U.S.C. 434 insofar as consideration of the financial interests of a spouse or minor child is concerned. And, since the administration must consider the substantiality of the interests of the spouse and minor children in the course of "screening" prospective nominees, the conclusions reached by the executive branch and made available to the committee will undoubtedly be helpful to it with respect to the problem of these financial interests.

Thus, in my view, section 208 would not aggravate the problem of the Armed Services Committee in passing upon Presidential nominees nor render more difficult the task of inducing them to accept appointive office. Moreover, I anticipate that acceptance of public office may be facilitated as a result of the steps outlined above currently being considered by the executive branch.

Sincerely yours,

NICHOLAS DEB. KATZENBACH,
Deputy Attorney General.

MAY 16, 1962.

HON. NICHOLAS DEB. KATZENBACH,
*Deputy Attorney General, Department of Justice,
Washington, D.C.*

DEAR MR. KATZENBACH: As you know, I am chairman of a Senate Armed Services subcommittee which is examining the matter of the committee policy on the divestment of securities by civilians who are nominated to statutory positions in the Department of Defense.

I am writing first with respect to H.R. 8140, which is pending before the Senate Committee on the Judiciary, and second, with regard to what efforts the administration is considering for meeting by regulation rather than by statute some of the recruiting problems which have resulted from the conflict-of-interest provision.

There is universal agreement that the Criminal Code should be sufficiently strong and clear to prevent irregularity on the part of Government officials and to maintain the strongest possible public confidence in the conduct of Government business. There is, however, at the same time the equally important problem of attracting to high Government positions private citizens of some means who desire to serve for periods of time in high positions and thereafter return to private life. The conflict-of-interest provision often presents problems which in no way relate to the integrity of the individual concerned.

The present conflict-of-interest provision (sec. 434, title 18), even though part of the Criminal Code, is considered relevant by the Senate Committee on Armed Services in connection with the requirement for divestment of securities by statutory nominees. It has been gradually felt that the nominee must avoid being placed in the position where, as a result of his private holdings, he might be in violation, even of a technical nature, of the conflict-of-interest provision. In H.R. 8140, section 434 will be repealed and replaced with a new provision which would prohibit a Government official from participating in a wide range of transactions on behalf of the Government in matters in which he, his wife, or children have a financial interest is insubstantial or unless his interest is too remote to affect the integrity of his services.

I would like to urge that the administration, in its support for a revision of the punitive provision of the conflict-of-interest rule, recognize the equally important need of easing to the extent possible problems of recruiting able private citizens, often with means, for positions in the executive branch. You might want to consider especially the problems which could be created by the inclusion of the financial interests of wives and children within the new conflict rule. These interests are not within the scope of existing law.

We realize the inherent difficulties in attempting to accommodate by statute the dual problem of a strong criminal conflicts provision and at the same time the problem of easing the task of obtaining for Government service able executives who might be placed in positions resulting in a technical violation of the conflict rule.

It is my understanding that in accordance with the President's message on the subject the administration is considering certain alternatives which can be accomplished by regulation for the purpose of alleviating the recruiting problem.

It would be most helpful to the subcommittee if you could advise us of the efforts being made along this line.

Sincerely yours,

HENRY M. JACKSON, *U.S. Senator.*

U.S. COURT OF APPEALS FOR THE THIRD DISTRICT,
Newark, N.J., June 15, 1962.

HON. JAMES O. EASTLAND,
*Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.*

HONORABLE AND DEAR SENATOR EASTLAND: The proposed revision of chapter 11 of the United States Code is intended to "strengthen the criminal laws relating to bribery, graft, and conflict of interests, etc." The members of the Judicial Conference of the United States, at its meeting in March of 1962, recommended disapproval of section 205 of the proposed legislation, but only in its application to part-time U.S. commissioners. There are no objections to the other sec-

tions of the proposed bill. The members of the Conference are concerned because the broad coverage of the said section may adversely affect the efforts to maintain an efficient "commissioner system" staffed by competent officers. We appreciate this opportunity to place before the committee the reasons which prompted the recommendation.

OFFICE OF U.S. COMMISSIONER

The office of U.S. commissioner has become increasingly important because of the many essentially judicial functions performed by the commissioner. He receives complaints in criminal cases, determines questions of probable cause incident to the issuance of warrants, conducts preliminary hearings, fixes bail and approves bond, entertains and hears applications for the discharge of indigent prisoners, presides in removal hearings, issues certain attachments, supervises the settlement of controversies arising out of the nonpayment of seamen's wages, and takes and certifies depositions. There are many commissioners who try petty offenses under special designations by the district courts.

The proper discharge of these many functions requires a knowledge of the law. We are of the opinion that the office can be best filled by a lawyer and we have therefore consistently encouraged the appointment of lawyers. As of May 16, 1962, there were 692 U.S. commissioners, and of this number 469 were practicing lawyers. These lawyers, except for a very few, serve on a part-time basis; their primary occupation is the practice of law. We are of the opinion that their services are important to the fair administration of the criminal laws.

A total of 24 commissioners report that they have no occupation except that of U.S. commissioner, but only 6 of these are recognized as full-time appointees by the Administrative Office of the U.S. Courts. The 668 commissioners having other vocations have reported their occupations as follows:

Clerks of district courts.....	8
Deputy clerks of district courts.....	50
Referees in bankruptcy.....	4
Court reporters.....	1
Practicing members of the bar.....	469
Miscellaneous.....	136

We should add that 23 U.S. commissioners, serving in rural areas and reported as having other "miscellaneous" occupations, are members of the bar, and may be engaged in the private practice of law as one of two or more other types of employment.

While the number of U.S. commissioners serving at the present time is substantial (692 as compared, for example, to 308 district judgeships), it is not likely that the need for commissioners—particularly part-time commissioners—will decrease in the foreseeable future. It is essential that there be a U.S. commissioner available in the smaller communities of the predominantly rural districts. The terms of court are held infrequently in some of the designated places for holding court and it is therefore necessary that in these places a commissioner be available as a representative of the court. Part-time commissioners have been employed to meet the need in predominantly rural districts since before 1800; thus far no satisfactory substitute for the system has been developed.

COMPENSATION OF COMMISSIONERS

The U.S. commissioners are paid on a statutory fee basis, and their annual compensation, except for a comparatively small number, is minimal. This is reflected in the summary hereto annexed. It is significant that during the calendar year of 1961, 498 commissioners earned less than \$3,000, and of this number 372 earned less than \$1,000. As of May 16, 1962, there were only 50 commissioners whose earnings for each of 3 consecutive years were sufficient to make them eligible for the benefits available under the Civil Service Retirement

Act, 5 United States Code 2252(g). The figures demonstrate another point which cannot be overlooked: a "commissioner system" in which the commissioners function on part time is the only one economically feasible.

A realistic picture of just how modest a financial return is realized by the average U.S. commissioner can be obtained by concentrating on a particular district: the eastern district of South Carolina. There are part-time commissioners stationed at Sumter, Orangeburg, Columbia, Bennettsville, Charleston, Aiken, Beaufort, and Florence. During the calendar year of 1961, one commissioner earned \$3,000, one earned \$2,200, one earned \$2,000, and one earned \$1,200; the other four earned less than \$1,000 during the same period. The total compensation paid eight part-time commissioners was less than that usually paid to a full-time referee in bankruptcy. There are many districts in which the situation is comparable.

EFFECT OF REVISION

The proposed revision of section 205, as we interpret it, would prohibit a U.S. commissioner from acting as an agent or attorney "before any department, agency, court, court-martial, officer, or any civil, military, or naval commission in connection with any proceeding, application, and request for a ruling or other determination, contract, claim, controversy, etc. * * *." The provision, if enacted, would prohibit a part-time commissioner, who is also an attorney engaged in private practice, from handling any Federal matter in the course of his private practice; he would be completely foreclosed from the field of Federal practice. The only objection of the Judicial Conference to the provision is to the comprehensive coverage as applied to part-time commissioners.

RECOMMENDATION

We recognize that the conflict-of-interests problems which could arise in the judicial branch of the Government should be treated as important, and we have endeavored to so treat them. We recognize, too, that the nature of the office held by a U.S. commissioner may require appropriate restraints on his other activities. We are of the opinion, however, that some differentiation should be made between full-time officers and part-time officers who perform an essential service for modest compensation. The absence of an appropriate exemption of part-time commissioners could prompt the resignation of many of the lawyers now in office. The inevitable result would be a mediocre "commissioner system" and the attendant problems in the administration of the criminal law.

We note that under section 205 of the proposed bill a "special Government employee" is subject to the provisions "only in relation to particular matter(s)" therein defined. However, a commissioner is not a "special Government employee" within the narrow definition of section 202(a). We are of the opinion that the proposed bill should include a provision which would exempt the part-time commissioners from its comprehensive coverage. There are areas of Federal legal practice in which a part-time commissioner is not confronted by any conflict-of-interest problem. These areas should not be foreclosed to him. We are of the opinion that a comparable exemption applicable to part-time commissioners, and consistent with the duties of the office, could be included in the proposed legislation without adversely affecting its salutary purposes.

The Judicial Conference of the United States has directed the Committee on the Administration of Criminal Law, of which I am Chairman, to study the operations of the "commissioner system." This study will require some consideration of the conflict-of-interests problems faced by part-time commissioners. We believe that it is possible to devise a realistic and workable code of ethics adequate to protect against unseemly conflicts.

Respectfully submitted.

WILLIAM F. SMITH,
*Chairman, Committee on the Administration of Criminal Law,
Judicial Conference of the United States.*

U.S. commissioners—Gross fees paid, calendar year 1961

Part time :		<i>Number</i>
\$14 to \$1,000	-----	372
\$1,001 to \$2,000	-----	86
\$2,001 to \$3,000	-----	40
\$3,001 to \$4,000	-----	19
\$4,001 to \$5,000	-----	15
\$5,001 to \$6,000	-----	4
\$6,001 to \$7,000	-----	4
\$7,001 to \$8,000	-----	2
\$8,001 to \$9,000	-----	3
\$9,001 to \$10,000	-----	4
\$10,001 to \$10,500	-----	12
Total		¹ 561
Full time :		<i>Number</i>
\$8,001 to \$9,000	-----	1
\$10,500	-----	5
Total		6

¹ 126 U.S. commissioners did not request the payment of any fees during calendar 1961, and presumably rendered little or no service.

(Whereupon, at 3:37 p.m., the subcommittee recessed, subject to the call of the Chair.)



87TH CONGRESS
1ST SESSION

H. R. 8140

IN THE HOUSE OF REPRESENTATIVES

JULY 13, 1961

Mr. CELLER introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) so much of chapter 11 of title 18 of the United
4 States Code as precedes section 214 is amended to read as
5 follows:

1 “CHAPTER 11—BRIBERY, GRAFT, AND CONFLICTS

2 OF INTEREST

“Sec.

“201. Bribery of public officials and witnesses.

“202. Definitions.

“203. Compensation of Members of Congress, officers and others, in matters affecting the Government.

“204. Practice in Court of Claims by Members of Congress.

“205. Activities of officers and employees in claims against and other matters affecting the Government.

“206. Exemption of retired officers of the Armed Forces.

“207. Disqualification of former officers and employees in matters connected with former duties or official responsibilities; disqualification of partners.

“208. Acts affecting a personal financial interest.

“209. Salary of Government officials and employees payable only by United States.

“210. Offer to procure appointive office.

“211. Acceptance or solicitation to obtain appointive public office.

“212. Offer of loan or gratuity to bank examiner.

“213. Acceptance of loan or gratuity by bank examiner.

“214. Offer for procurement of Federal Reserve bank loan and discount of commercial paper.

“215. Receipt of commissions or gifts for procuring loans.

“216. Receipt or charge of commissions or gifts for farm loan or land bank transactions.

“217. Acceptance of consideration for adjustment of farm indebtedness.

“218. Voiding transactions in violation of chapter; recovery by the United States.

3 “§ 201. Bribery of public officials and witnesses

4 “(a) For the purpose of this section:

5 “‘public official’ means Member of Congress, or
6 Resident Commissioner, either before or after he has
7 qualified, or an officer or employee or person acting for
8 or on behalf of the United States, or any department,
9 agency or branch of Government thereof, in any official
10 function, under or by authority of any such depart-

ment, agency, or branch of Government, or a juror;
and

“ ‘person who has been selected to be a public official’ means any person who has been nominated or appointed to be a public official, or has been officially informed that he will be so nominated or appointed; and

“ ‘official act’ means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in his official capacity, or in his place of trust or profit.

“(b) Whoever, directly or indirectly, corruptly gives, offers or promises anything of value to any public official or person who has been selected to be a public official, or offers or promises any public official or any person who has been selected to be a public official to give anything of value to any other person or entity, with intent—

“(1) to influence any official act; or

“(2) to influence such public official or person who has been selected to be a public official to commit or aid in committing, or collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

1 “(3) to induce such public official or such person
2 who has been selected to be a public official to do or omit
3 to do any act in violation of his lawful duty, or

4 “(c) Whoever, being a public official or person selected
5 to be a public official, directly or indirectly, corruptly asks,
6 demands, exacts, solicits, seeks, accepts, receives, or agrees
7 to receive anything of value for himself or for any other per-
8 son or entity, in return for:

9 “(1) being influenced in his performance of any
10 official act; or

11 “(2) being influenced to commit or aid in com-
12 mitting, or to collude in, or allow, any fraud, or make
13 opportunity for the commission of any fraud, on the
14 United States; or

15 “(3) being induced to do or omit to do any act in
16 violation of his official duty; or

17 “(d) Whoever, directly or indirectly, corruptly gives,
18 offers, or promises anything of value to any person, or offers
19 or promises such person to give anything of value to any
20 other person or entity, with intent to influence the testimony
21 under oath or affirmation of such first-mentioned person as a
22 witness upon a trial, hearing, or other proceeding, before
23 any court, any committee of either House or both Houses of
24 Congress, or any agency, commission, or officer authorized
25 by the laws of the United States to hear evidence or take

1 testimony, or with intent to influence such person to absent
2 himself therefrom; or

3 “(e) Whoever, directly or indirectly, corruptly asks,
4 demands, exacts, solicits, seeks, accepts, receives, or agrees
5 to receive anything of value for himself or for any other
6 person or entity in return for being influenced in his testi-
7 mony under oath or affirmation as a witness upon any such
8 trial, hearing, or other proceeding, or in return for absenting
9 himself therefrom—

10 “Shall be fined not more than \$20,000 or three times
11 the monetary equivalent of the thing of value, whichever is
12 greater, or imprisoned for not more than fifteen years, or
13 both, and may be disqualified from holding any office
14 of honor, trust, or profit under the United States.

15 “(f) Whoever, otherwise than as provided by law for
16 the proper discharge of official duty, directly or indirectly
17 gives, offers, or promises anything of value to any public
18 official, former public official, or person selected to be a pub-
19 lic official, for or because of any official act performed or to
20 be performed by such public official, former public official,
21 or person selected to be a public official; or

22 “(g) Whoever, being a public official, former public
23 official, or person selected to be a public official, otherwise
24 than as provided by law for the proper discharge of official
25 duty, directly or indirectly asks, demands, exacts, solicits,

1 seeks, accepts, receives, or agrees to receive anything of
2 value for himself for or because of any official act performed
3 or to be performed by him; or

4 “(h) Whoever, directly or indirectly, gives, offers, or
5 promises anything of value to any person, for or because
6 of the testimony under oath or affirmation given or to be
7 given by such person as a witness upon a trial, hearing, or
8 other proceeding, before any court, any committee of either
9 House or both Houses of Congress, or any agency, com-
10 mission, or officer authorized by the laws of the United
11 States to hear evidence or take testimony, or for or be-
12 cause of his absence therefrom; or

13 “(i) Whoever, directly or indirectly, asks, demands,
14 exacts, solicits, seeks, accepts, receives, or agrees to receive
15 anything of value for himself for or because of the testimony
16 under oath or affirmation given or to be given by him as a
17 witness upon any such trial, hearing, or other proceeding,
18 or for or because of his absence therefrom—

19 “Shall be fined not more than \$10,000 or imprisoned
20 for not more than two years, or both.

21 “(j) Subsections (d), (e), (h), and (i) shall not be
22 construed to prohibit the payment or receipt of witness fees
23 provided by law, or the payment, by the party upon whose
24 behalf a witness is called and receipt by a witness, of
25 the reasonable cost of travel and subsistence incurred and the

1 reasonable value of time lost in attendance at any such trial,
2 hearing, or proceeding, or, in the case of expert witnesses,
3 involving a technical or professional opinion, a reasonable
4 fee for time spent in the preparation of such opinion, and in
5 appearing and testifying.

6 “(k) The offenses and penalties prescribed in this sec-
7 tion are separate from and in addition to those prescribed in
8 sections 1503, 1504, and 1505 of this title.”

9 **“§ 202. Definitions**

10 “(a) For the purpose of sections 203, 205, 207, 208,
11 and 209 of this title the term ‘special Government employee’
12 shall mean an officer or employee of the executive branch
13 of the United States Government, of any independent agency
14 of the United States or of the District of Columbia, who is
15 retained, designated, appointed, or employed to perform, with
16 or without compensation, for not to exceed one hundred and
17 thirty days during any period of three hundred and sixty-
18 five consecutive days, temporary duties either on a full-time
19 or intermittent basis. Notwithstanding section 29 (c) and
20 (d) of the Act of August 10, 1956 (70A Stat. 632; 5
21 U.S.C. 304 (c) and (d)), a Reserve officer of the Armed
22 Forces, or an officer of the National Guard of the United
23 States, unless otherwise an officer or employee of the United
24 States, shall be classified as a special Government employee
25 while on active duty solely for training. A Reserve officer

1 of the Armed Forces or an officer of the National Guard
 2 of the United States who is serving a period of extended
 3 active duty in excess of one hundred and thirty days shall
 4 be classified as an officer of the United States within the
 5 meaning of section 203 and sections 205 through 209 and
 6 218. The terms ‘officer or employee’ and ‘special Govern-
 7 ment employee’ as used in sections 203, 205, 207 through
 8 209, and 218, shall not include enlisted members of the
 9 Armed Forces.

10 “(b) For the purposes of sections 203, 205, and 207
 11 of this title, the term ‘official responsibility’ means the direct
 12 administrative or operating authority, whether intermediate
 13 or final, and either exercisable alone or with others, and
 14 either personally or through subordinates, to approve, dis-
 15 approve, or otherwise direct Government action.

16 **“§ 203. Compensation to Members of Congress, officers, and**
 17 **others in matters affecting the Government**

18 “(a) Whoever, otherwise than as provided by law for
 19 the proper discharge of official duties, directly or indirectly
 20 receives or agrees to receive, or asks, demands, solicits, or
 21 seeks, any compensation for any services rendered or to be
 22 rendered either by himself or another—

23 “(1) at a time when he is a Member of Congress or
 24 a Resident Commissioner, either before or after he has
 25 qualified; or

“ (2) at a time when he is an officer or employee of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States, including the District of Columbia, in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, court-martial, officer, or any civil, military, or naval commission, or

“ (b) Whoever, knowingly, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly gives, promises, or offers any compensation for any such services rendered or to be rendered at a time when the person to whom the compensation is given, promised, or offered, is or was such a Member, Commissioner, officer, or employee—

“ Shall be fined not more than \$10,000 or imprisoned for not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States.

“ (c) A special Government employee shall be subject to subsection (a) only in relation to a particular matter

(1) in which he has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or (2) which is or within two years has been a subject of his official responsibility, or (3) which is pending in the department or agency of the Government in which he is serving: *Provided*, That clause (3) shall not apply in the case of a special Government employee who serves no more than fifteen days during any period of three hundred and sixty-five consecutive days.

“§ 204. Practice in Court of Claims by Members of Congress

“Whoever, being a Member of Congress or a Resident Commissioner, either before or after he has qualified practices in the Court of Claims, shall be fined not more than \$10,000 or imprisoned for not more than two years, or both, and shall be incapable of holding any office of honor, trust, or profit under the United States.

“§ 205. Activities of officers and employees in claims against and other matters affecting the Government

“Whoever, being an officer or employee of the United States in the executive, legislative, or judicial branch of the Government or in any agency of the United States, includ-

1 ing the District of Columbia, otherwise than in the proper
2 discharge of his official duties—

3 “(1) acts as agent or attorney for prosecuting any
4 claim against the United States, or receives any gratuity,
5 or any share of or interest in any such claim in
6 consideration of assistance in the prosecution of such
7 claim, or

8 “(2) acts as agent or attorney for anyone before
9 any department, agency, court, court-martial, officer, or
10 any civil, military, or naval commission in connection
11 with any proceeding, application, request for a ruling
12 or other determination, contract, claim, controversy,
13 charge, accusation, arrest, or other matter in which the
14 United States is a party or has a direct and substantial
15 interest—

16 “Shall be fined not more than \$10,000 or imprisoned for
17 not more than two years, or both.

18 “A special Government employee shall be subject to the
19 preceding paragraphs only in relation to a particular matter
20 (1) in which he has at any time participated personally
21 and substantially as a Government employee or as a special
22 Government employee through decision, approval, disapproval,
23 recommendation, the rendering of advice, investigation or otherwise,
24 or (2) which is or within two years has
25 been a subject of his official responsibility, or (3) which is

1 pending in the department or agency of the Government
2 in which he is serving: *Provided*, That clause (3) shall
3 not apply in the case of a special Government employee who
4 serves no more than fifteen days during any period of three
5 hundred and sixty-five consecutive days.

6 “Nothing herein prevents an officer or employee from
7 taking uncompensated action, not inconsistent with the
8 faithful performance of his duties, to aid or assist any person
9 who is the subject of disciplinary, loyalty, or other person-
10 nel administration proceedings with respect to those pro-
11 ceedings.

12 “Nothing herein or in section 203 prevents an officer or
13 employee, including a special Government employee, from
14 acting, with or without compensation, as agent or attorney
15 for or otherwise aiding or assisting his parents, spouse, child,
16 or any person for whom he is serving as guardian, executor,
17 administrator, trustee, or other personal fiduciary except in
18 those matters in which he has participated personally and
19 substantially as a Government employee, through decision,
20 approval, disapproval, recommendation, the rendering of
21 advice, investigation, or otherwise, or which are the sub-
22 ject of his official responsibility, provided that the Govern-
23 ment official responsible for appointment to his position
24 approves.

25 “Nothing herein or in section 203 or 207 prevents

1 a present or former special Government employee from aid-
2 ing or assisting another person in the performance of work
3 under a contract with or for the benefit of the United States
4 provided that the head of such special Government em-
5 ployee's department or agency shall certify in writing that
6 the national interest requires such aid or assistance.

7 "Such certification shall be published in the Federal
8 Register.

9 "Nothing herein prevents an officer or employee from
10 giving testimony under oath or from making statements
11 required to be made under penalty for perjury or contempt.

12 **"§ 206. Exemption of retired officers of the Armed Forces**

13 "Sections 203 and 205 of this title shall not apply to a
14 retired officer of the Armed Forces of the United States while
15 not on active duty and not otherwise an officer or employee
16 of the United States, or to any person specially excepted by
17 Act of Congress.

18 **"§ 207. Disqualification of former officers and employees**
19 **in matters connected with former duties or offi-**
20 **cial responsibilities; disqualification of partners**

21 "(a) Whoever, having been an officer or employee of
22 the executive branch of the United States Government, of
23 any independent agency of the United States, or of the
24 District of Columbia, including a special Government em-

1 ployee, after his employment has ceased, knowingly acts as
2 agent or attorney for, or aids or assists anyone in connection
3 with any judicial or other proceeding, application, request
4 for a ruling or other determination, contract, claim, con-
5 troversy, charge, accusation, arrest, or other particular mat-
6 ter in which the United States is a party or has a direct and
7 substantial interest and in which he participated personally
8 and substantially as an officer or employee, through decision,
9 approval, disapproval, recommendation, the rendering of ad-
10 vice, investigation, or otherwise, while so employed, or

11 “(b) Whoever, having been so employed, within two
12 years after his last employment has ceased, appears per-
13 sonally before any court or department or agency of the
14 Government as agent, or attorney for, anyone other than
15 the United States in connection with any proceeding, appli-
16 cation, request for a ruling or other determination, contract,
17 claim, controversy, charge, accusation, arrest, or other par-
18 ticular matter in which the United States is a party or
19 directly and substantially interested, and which was under
20 his official responsibility as an officer or employee of the
21 Government at any time within a period of two years prior
22 to the termination of his employment—

23 “Shall be fined not more than \$10,000 or imprisoned
24 for not more than two years, or both.

1 “(c) Whoever, being a partner of a former officer or
2 employee of the executive branch of the United States Gov-
3 ernment, of any independent agency of the United States, or
4 of the District of Columbia, including a former special Gov-
5 ernment employee, engages, during a period of two years
6 following the termination of the latter’s employment by the
7 Government, in any activities which such former officer or
8 employee of the Government or special Government em-
9 ployee is himself prohibited from engaging in by subsection
10 (a) hereof; or

11 “(d) Whoever, being a partner of such an officer or
12 employee of the executive branch of the United States Gov-
13 ernment, of any independent agency of the United States,
14 or of the District of Columbia, including a special Govern-
15 ment employee, acts as agent or attorney for, or aids or
16 assists anyone other than the United States, in connection
17 with any judicial or other proceeding, application, request
18 for a ruling or other determination, contract, claim, contro-
19 versy, charge, accusation, arrest, or other particular matter
20 in which the United States is a party or has a direct and
21 substantial interest and in which such officer or employee of
22 the Government or special Government employee partici-
23 pates or has participated personally and substantially as a
24 Government employee through decision, approval, disap-

1 proval, recommendation, the rendering of advice, investiga-
2 tion or otherwise, or which is the subject of his official
3 responsibility—

4 “Shall be fined not more than \$5,000, or imprisoned
5 not more than one year, or both.

6 “A partner of a present or former officer or employee of
7 the executive branch of the United States Government, of
8 any independent agency of the United States, or of the
9 District of Columbia or of a present or former special Gov-
10 ernment employee shall as such be subject to the provisions
11 of sections 203, 205, and 207 of this title only as expressly
12 provided in subsections (c) and (d) of this section.

13 **“§ 208. Acts affecting a personal financial interest**

14 “(a) Except as permitted by subsection (b) hereof,
15 whoever, being an officer or employee of the executive
16 branch of the United States Government, of any independent
17 agency of the United States, or of the District of Columbia,
18 including a special Government employee, participates per-
19 sonally and substantially as a Government officer or em-
20 ployee, through decision, approval, disapproval, recommen-
21 dation, the rendering of advice, investigation, or otherwise,
22 in a Government action, proceeding, or other particular
23 matter in which, to his knowledge, he, his spouse, child, part-
24 ner, business organization in which he is serving as officer,
25 director, trustee, partner or employee, or any person or or-

1 organization with whom he is negotiating or has any arrange-
2 ment concerning prospective employment, has a financial
3 interest,

4 “Shall be fined not more than \$10,000, or imprisoned
5 not more than two years, or both.

6 “(b) Subsection (a) hereof shall not apply (1) if the
7 officer or employee first advises the Government official re-
8 sponsible for appointment to his position of the nature and
9 circumstances of the action, proceeding, or other particular
10 matter and makes full disclosure of the financial interest and
11 receives in advance a written determination made by such
12 official that the interest is not so substantial as to be deemed
13 likely to affect the integrity of the services which the Gov-
14 ernment may expect from such officer or employee, or (2)
15 if, by general rule or regulation published in the Federal
16 Register, the financial interest has been exempted from the
17 requirements of clause (1) hereof as being too remote or
18 too inconsequential to affect the integrity of Government
19 officers’ or employees’ services.

20 **“§ 209. Salary of Government officials and employees pay-**
21 **able only by United States**

22 “(a) Whoever receives any salary, or any contribu-
23 tion to or supplementation of salary, as compensation for
24 his services as an officer or employee of the executive branch
25 of the United States Government, of any independent

1 agency of the United States, or of the District of Columbia,
2 from any source other than the Government of the United
3 States, except as may be contributed out of the treasury of
4 any State, county, or municipality; or

5 • “Whoever, whether an individual, partnership, associa-
6 tion, corporation, or other organization pays, or makes any
7 contribution to, or in any way supplements the salary of,
8 any such officer or employee under circumstances which
9 would make its receipt a violation of this subsection—

10 “Shall be fined not more than \$5,000 or imprisoned not
11 more than one year, or both.

12 “(b) Nothing herein prevents an officer or employee of
13 the executive branch of the United States Government, or of
14 any independent agency of the United States, or of the Dis-
15 trict of Columbia, from continuing to participate in a bona
16 fide pension, retirement, group life, health or accident insur-
17 ance, profit-sharing, stock bonus, or other employee welfare
18 or benefit plan maintained by a former employer.

19 “(c) This section does not apply to a special Govern-
20 ment employee or to an officer or employee of the Govern-
21 ment serving without compensation, whether or not he is a
22 special Government employee, or to any person paying,
23 contributing to, or supplementing his salary as such.”

24 “(d) This section does not prohibit payment or accept-
25 ance of contributions, awards, or other expenses under the

1 terms of the Government Employees Training Act (Public
2 Law 85-507, 72 Stat. 327; 5 U.S.C. 2301-2319, July 7,
3 1958).”

4 (b) Sections 214 and 215 of chapter 11 of title 18 of
5 the United States Code are respectively redesignated sections
6 210 and 211;

7 (c) Sections 216 and 223 of chapter 11 of title 18 of
8 the United States Code are repealed;

9 (d) Sections 217, 218, 219, 220, 221, and 222 of
10 chapter 11 of title 18 of the United States Code are respec-
11 tively redesignated sections 212, 213, 214, 215, 216, and
12 217;

13 (e) Chapter 11 of title 18 of the United States Code
14 is further amended by adding at the end thereof the following
15 new section:

16 **“§ 218. Voiding transactions in violation of chapter; re-**
17 **covery by the United States**

18 “In addition to any other remedies provided by law
19 the President or, under regulations prescribed by him, the
20 head of any department or agency involved, may declare
21 void and rescind any contract, loan, grant, subsidy, license,
22 right, permit, franchise, use, authority, privilege, benefit,
23 certificate, ruling, decision, opinion, or rate schedule awarded,
24 granted, paid, furnished, or published, or the performance
25 of any service or transfer or delivery of any thing to, by

1 or for any agency of the United States or officer or employee
2 of the United States or person acting on behalf thereof, in
3 relation to which there has been any violation of this
4 chapter, and the United States shall be entitled to recover
5 in addition to any penalty prescribed by law or in a con-
6 tract the amount expended or the thing transferred or
7 delivered on its behalf, or the reasonable value thereof.”

8 SEC. 2. Sections 281 and 283 (except as they may
9 apply to retired officers of the armed forces of the United
10 States), 282 and 284 of chapter 15 of title 18, section 434
11 of chapter 23 of title 18, and section 1914 of chapter 93 of
12 title 18 of the United States Code are repealed and will, re-
13 spectively, be supplanted by sections 203, 205, 204, 207,
14 208, and 209 of title 18 of the United States Code as set
15 forth in section 1 of this Act. All exemptions from the pro-
16 visions of sections 281, 282, 283, 284, 434, or 1914 of title
17 18 of the United States Code heretofore created or author-
18 ized by statute which are in force on the effective date of
19 this Act shall, on and after that date, be deemed to be ex-
20 emptions from sections 203, 204, 205, 207, 208, or 209,
21 respectively, of title 18 of the United States Code except to
22 the extent that they affect officers or employees of the execu-
23 tive branch of the United States Government, of any inde-
24 pendent agency of the United States, or of the District of
25 Columbia, as to whom they are no longer applicable.

1 SEC. 3. Section 190 of the Revised Statutes (5 U.S.C.
2 99) is repealed.

3 SEC. 4. This Act shall take effect ninety days after the
4 date of its enactment.

87TH CONGRESS
1ST SESSION

H. R. 8140

A BILL

To strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes.

By Mr. Celler

JULY 13, 1961

Referred to the Committee on the Judiciary

July 18, 1961

- House
4. WATER RESOURCES. Sen. Anderson announced that there will be joint hearings by the Interior and Insular Affairs and the Public Works Committees on S. 1629 and S. 2246, proposed water resource bills, beginning July 26. p. 11898
 5. FEED GRAINS. Sen. Williams, Del., criticized the feed grains program, stating that the Department "has paid over \$150 million to take out of corn production 4½ million phantom acres of land which in reality was never intended to be put into corn production in 1961," that "based upon the Department of Agriculture's crop report just released this week, while the Secretary has paid for the retirement of over 20 million acres of corn-producing land from this year's production, he has actually obtained a reduction of only 15,379,000 acres," and inserted tables on crop production to support his position. pp. 11960-2
 6. TRADE FAIRS. Both Houses received from the President the Ninth Semiannual Report of operations under the International Cultural Exchange and Trade Fair Participation Act. pp. 11858, 11887
 7. WEATHER. Both Houses received from the President the Second Annual Report on Weather Modification (H. Doc. 213). pp. 11860-1, 11887
 8. FARM PROGRAM. Received from the Senate of California a resolution supporting H. R. 6400 and S. 1643, the omnibus farm bills. pp. 11888-9
Sen. Burdick submitted proposed amendments intended to be proposed to S. 1643, the omnibus farm bill. p. 11897
 9. APPROPRIATIONS. The Appropriations Committee reported with amendments H. R. 7208, the legislative branch appropriation bill for 1962 (S. Rept. 570). p. 11889
 10. WILDLIFE. The Commerce Committee reported without amendment H. R. 1182, to create the Wyandotte National Wildlife Refuge (S. Rept. 573). p. 11889
 11. STOCKPILING. Sen. Byrd, Va., inserted a report, "Federal Stockpile Inventories, May 1961," including agricultural products and CCC inventories. pp. 11889-95
 12. TEXTILES. Sen. Javits discussed the textile problem and inserted an article, "Textile Meeting Opens at Geneva: International Trade Talks by Leaders of Industry are Underway." pp. 11899-900
 13. CHEESE. Sen. Proxmire spoke against increased import quotas on cheese, saying, "If more foreign cheese enters the United States, the American taxpayer will be paying for each pound twice. He will pay for it once when he buys the cheese, and he will pay for it a second time when he pays the taxes used by the CCC to purchase the American cheese which the foreign product has displaced." pp. 11905-6
 14. ATOMIC ENERGY. Passed with amendments H. R. 7576, authorizing appropriations for the Atomic Energy Commission. A similar bill, S. 2143, was indefinitely postponed. pp. 11919-29, 11932-55, 11958-9, 11960
 15. HEARING EXAMINERS. On a motion by Sen. Keating, S. 2189, to establish an Office of Federal Administrative Practice and to provide for the appointment and administration of a corps of hearing commissioners, was referred from the Government Operations Committee to the Judiciary Committee. p. 11897

16. ELECTRIFICATION. Sen. Kefauver commended the announcement of the TVA "that it was permitting the some 150 municipal and cooperative distributors of its electric power to reduce rates by 8 percent to their customers in the seven Valley States." pp. 11959-60
17. LEGISLATIVE PROGRAM. Sen. Mansfield announced that on Fri. or Sat. the legislative appropriation bill and unobjected measures on the calendar will be considered, and next Mon. the farm bill will be taken up. p. 11969
18. ADJOURNED until Thurs., July 20. p. 11971

HOUSE

19. FARM PROGRAM. The "Daily Digest" states that the Agriculture Committee "Met in executive session and approved the second committee print of the general farm bill. The chairman will introduce the print in the House Wednesday, July 19."
20. APPROPRIATIONS. Conferees were appointed on H. R. 7577, making appropriations for the Executive Office of the President, the Department of Commerce, and sundry agencies for 1962 (p. 11854). Senate conferees have already been appointed.
21. ETHICS. The Judiciary Committee voted to report with amendments H. R. 8140, to strengthen the criminal laws relating to bribery, graft, and conflicts of interest. p. D585
22. EDUCATION. The "Daily Digest" states that the Rules Committee tabled H. R. 7215, authorizing assistance to institutions of higher education for construction and improvements, and scholarship grants for undergraduate study, H. R. 7300, relating to financial assistance for public elementary and secondary schools, and H. R. 7904, to extend and improve the National Defense Education Act. p. D585
Rep. Ashbrook criticized Federal aid to education, saying "it has been folly to argue that we could have a comprehensive aid to education program without controls," and inserting a report, "A Federal Education Agency for the Future." pp. 11868-80
23. COMMERCE. The Interstate and Foreign Commerce Committee reported with amendments H. R. 2429, to prohibit damage to, or destruction of, any shipment of freight or express moving in interstate or foreign commerce (H. Rept. 727). p. 11886

ITEMS IN APPENDIX

24. WATER RESOURCES. Extension of remarks of Sen. Kerr inserting an address, "The Report of the Senate Select Committee on National Water Resources." pp. A5427-9
Extension of remarks of Rep. Cunningham inserting comments from a report by the Army Enginners on Nebraska and its great resources of soil and water. p. A5446
Extension of remarks of Rep. Udall urging conservation of our natural resources and inserting an article, "Attack On Pollution Is Needed." p. A5461
Extension of remarks of Rep. Sikes inserting an address by the president of the National Rivers and Harbors Congress, "The Mission of the National Rivers and Harbors Congress." pp. A5477-9

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF
BUDGET AND FINANCE
(For information only;
should not be quoted
or cited)

CONTENTS

Issued July 21, 1961
For actions of July 20, 1961
87th-1st, No. 122

Adjournment.....	9,20
Appropriations.....	3,5,11
CCC appraisals.....	3
Cheese imports.....	23
Civil defense.....	18
Committees.....	8
Conservation reserve.....	1
Education.....	28
Electrification.....	24
Ethics.....	7
Farm labor.....	31
Farm program.....	1,10,19
Foreign aid.....	12,19,21
Foreign trade.....	29
Forestry.....	13
4-H Clubs.....	16
Grants-in-aid.....	26
Legislative program.....	19

Livestock and poultry.....	13
National parkways.....	27
Nomination.....	14
Personnel.....	6
Recreation.....	27
Research.....	15,32
Small business.....	30
Surplus commodities.....	29
Surplus grain.....	2
Textile imports.....	25
Transportation.....	17
Water pollution.....	33
Water resources.....	4,22
Wildlife.....	2

HIGHLIGHTS: House committee voted to report farm bill and bill to permit removal of hay on conservation reserve acreage adjacent to disaster areas. Committee received permission to report these bills this weekend. House agreed to conference report on general Government - Commerce appropriation bill. Sen. Proxmire submitte amendment to farm bill to provide individual producer milk allotments in local areas. Senate passed legislative branch appropriation bill.

HOUSE

- 1. FARM PROGRAM.** The Agriculture Committee voted to report (but did not actually report) with amendments H. R. 8230, the omnibus farm bill, and S. 2197, to authorize the Secretary of Agriculture to permit the removal of hay from, or grazing on, conservation reserve lands adjacent to or near disaster areas (pp. D596-7). The Committee was granted until midnight Sat., July 22, to file reports on these bills (p. 12163).
- 2. SURPLUS GRAIN.** The Banking and Currency Committee reported without amendment S. 614, to permit the States in emergency situations to obtain grain from CCC to prevent starvation of resident game birds and other resident wildlife (H. Rept. 746). p. 12184
- 3. CCC APPRAISALS.** The Banking and Currency Committee reported without amendment S. 763, to authorize annual appropriations to reimburse CCC for net realized losses sustained during any fiscal year in lieu of annual appropriations to restore capital impairment based on annual Treasury appraisals. The bill provides for the amount of net gain or loss realized by CCC to be determined from the Corporation's financial statements as of the end of each fiscal year instead of requiring the Secretary of the Treasury to make an annual independent appraisal of the Corporation's assets and liabilities for the purpose of determining the net worth of the Corporation. (H. Rept. 751). p. 12184

4. WATER RESOURCES. The Rules Committee reported a rule for the consideration of H. R. 30, granting the consent and approval of Congress to the Northeastern Water and Related Land Resources Compact. pp. 12122, 12184
5. APPROPRIATIONS. Agreed to the conference report on H. R. 7577, the general Government matters-Commerce appropriation bill for 1962, and acted on amendments in disagreement (pp. 12135-9). See Digest 121 for items of interest. The Appropriations Committee was granted until midnight Fri., July 21, to file a report on the military construction appropriation bill for 1962. p. 12122
6. PERSONNEL. Subcommittee No. 2 of the Judiciary Committee voted to report to the full committee with amendments H. R. 4131, to authorize the waiver of collection of certain erroneous payments made by the Federal Government to certain civilian and military personnel. p. D597
7. ETHICS. The Judiciary Committee reported with amendments H. R. 8140, to strengthen the criminal laws relating to bribery, graft, and conflicts of interest (H. Rept. 748). p. 12184
8. COMMITTEES. Received reports of the House committees on salaries and expenses of the committees for the 6-months period ending June 30, 1961. pp. 12178-84
9. ADJOURNED until Mon., July 24. pp. 12153, 12178

SENATE

10. FARM PROGRAM. Sen. Proxmire submitted an amendment intended to be proposed to S. 1643, the omnibus farm bill, which would amend the Agricultural Marketing Agreement Act of 1937 so as to provide for individual producer milk allotments in local and regional marketing areas. He stated that the proposed amendment "would permit dairy farmers to adopt milk sales allotments for individual dairy farms which would enable them to manage total marketing of milk from each such farm in line with their sales of fluid milk." pp. 12034-5
Sen. Miller inserted an article critical of the omnibus farm bill. pp. 12061-2
11. LEGISLATIVE BRANCH APPROPRIATION BILL, 1962. Passed as reported this bill, H. 7208 (pp. 12085-6, 12092-6). Conferees were appointed (p. 12096).
12. FOREIGN AID. The Foreign Relations Committee was granted permission to file a report during adjournment of the Senate this week-end on S. 1983, the foreign aid authorization bill. p. 12021
Sen. Humphrey discussed the importance of the foreign aid program and inserted an editorial, "Long-Term Foreign Aid," and a copy of a joint letter from Secretaries Rusk and Dillion to members of Congress "commenting on some of the more controversial sections of the foreign-aid program." pp. 12049-51
Sen. Williams, Del., inserted an article critical of the foreign aid program. p. 12091
13. THE AGRICULTURE AND FORESTRY COMMITTEE reported the following bills: p. 12022
S. 860, without amendment, to grant the Secretary of Agriculture additional authority for protection against the introduction and dissemination of disease of livestock and poultry (S. Report 582).
H. R. 2249, without amendment, to authorize the Secretary of Agriculture to convey a tract of forest land in Calif. to Trinity County (S. Rept. 580).
H. R. 2250, without amendment, to authorize the Secretary of Agriculture

BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

JULY 20, 1961.—Referred to the House Calendar and ordered to be printed

Mr. McCULLOCH, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 8140]

The Committee on the Judiciary, to whom was referred the bill (H.R. 8140) to strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill do pass.

The amendments are as follows:

1. In the analysis of sections under the chapter heading (following p. 2, line 2):

(a) Strike "210. Offer to procure appointive office" and insert in lieu thereof "210. Offer to procure appointive public office";

(b) Strike "216. Receipt or charge of commissions or gifts for farm loan or land bank transactions" and insert in lieu thereof "216. Receipt or charge of commissions or gifts for farm loan, land bank, or small business transactions".

2. On page 7, line 21 of the bill, strike "U.S.C. 304 (c) and (d)), and insert in lieu thereof "U.S.C. 30r (c) and (d)),".

3. (a) On page 8, lines 23 to 25, strike "Member of Congress or a Resident Commissioner, either before or after he has qualified;" and insert in lieu thereof "Member of Congress, Member of Congress Elect, Resident Commissioner, or Resident Commissioner Elect;" and

(b) On page 10, lines 14 and 15, strike "Member of Congress or a Resident Commissioner, either before or after he has qualified" and insert in lieu thereof "Member of Congress, Member of Congress Elect, Resident Commissioner, or Resident Commissioner Elect,".

4. On page 9, lines 4 through 11, move the text following "District of Columbia," to the left-hand margin.

5. On page 11, line 13, insert the word "particular" after the word "other".

6. On page 14, line 2:

(a) Strike “, or aids or assists”, and

(b) Insert after the word “anyone” the words “other than the United States”.

7. On page 15, lines 15 and 16, after the word “for” strike “, or aids or assists”.

8. On page 15, line 11, strike the word “such”.

9. On page 20, line 3, insert after the word “been” the words “a final conviction for”.

PURPOSE OF THE AMENDMENTS

The purpose of amendments 1, 2, 3, 4, 5, 8, and 9 is to correct typographical errors, and conform and clarify language.

The purpose of amendments 6 and 7 is to conform the disqualification of former Government employees and of partners of Government employees and former Government employees to the language of section 205 (p. 11, line 8).

PURPOSE OF THE BILL

The purpose of the bill is (1) to strengthen, revise, and simplify existing Federal conflict-of-interest laws, (2) to make appropriate general provision for consultants and temporary employees in the executive branch, the independent agencies and the District of Columbia, and (3) to integrate these conflict-of-interest laws with recodified prohibitions of bribery and graft—all to the end that improper and unethical practices will be prevented without depriving the Government of the services of competent and conscientious men and women.

REASONS FOR THE BILL

Recent years have recorded a growing concern, both in and out of Congress, with the ever present and perplexing problems of how best to assure high ethical standards in the conduct of the Federal Government. The Committee on the Judiciary, as well as other congressional committees, has conducted investigations into conflict of interest cases arising in executive agencies of the Government. The consensus of public expressions on the subject has criticized existing Federal legislation in this area as inadequate and confused.

As a 1958 staff report of Subcommittee No. 5 of the Committee on the Judiciary observed:

Existing conflict of interest law comprises overlapping, inconsistent and incomplete provisions * * *¹

Similarly, in 1960, the chairman of a special committee on Federal conflict of interest laws of the Association of the Bar of the City of New York which conducted an extensive study of these laws has testified that:

The statutory law—most of it a century old—is not broad enough to protect the Government against the manifold modern forms of conflict of interest.²

Soon after taking office the President of the United States appointed

¹ Staff of Subcommittee No. 5, House Committee on the Judiciary, 85th Cong., 2d sess., “Report on conflict of Interest Legislation,” pts. I and II, (Committee print 1958), p. 2.

² Hearings before Subcommittee No. 5 of the House Committee on the Judiciary on “Federal Conflict of Interest Legislation,” 86th Cong., 2d sess., Mar. 3, 1960, p. 388.

³ Message from the President of the United States, H. Doc. No. 145, 87th Cong., 1st sess., Apr. 27, 1961, p. 3.

a special conflict of interest panel to study and report to him concerning appropriate legislative proposals in the conflict of interest area. On receipt of the report of this panel the President, in a special message to Congress on conflicts of interest transmitted in April, had this to say about the existing conflict of interest statutes:

Five of these statutes were enacted before 1873. Each was enacted without coordination with any of the others. No two of them use uniform terminology. All but one impose criminal penalties. There is both overlap and inconsistency. Every study of these laws has concluded that, while sound in principle, they are grossly deficient in form and substance.

The fundamental defect of these statutes as presently written is that: On the one hand, they permit an astonishing range of private interests and activities by public officials which are wholly incompatible with the duties of public office; on the other hand, they create wholly unnecessary obstacles to recruiting qualified people for Government service. This latter deficiency is particularly serious in the case of consultants and other temporary employees, and has been repeatedly recognized by Congress in its enactment of special exemption statutes.³

The previous administration also took a profoundly constructive interest in the problems of conflict of interest in Federal employment. In June 1960, an Assistant Attorney General of the United States testified in detail and at length before Subcommittee No. 5 in exposition of the administration's views, calling for a thorough revision and strengthening of existing law.

There are eight statutes of general application termed "Conflict-of-interest" statutes. They cover four basic problems:

The Government official or employee who acts for an outside interest in certain dealings with the Government (18 U.S.C. 281, 282, 283, 216).

The Government official or employee who acts on behalf of the Government in a business transaction with an entity in which he has a personal economic stake (18 U.S.C. 434).

The former Government official or employee who acts in a representative capacity in certain transactions with the Government during the 2-year period after termination of his Government service (18 U.S.C. 284, 5 U.S.C. 99).

The Government official or employee who receives compensation from a private source for his Government work (18 U.S.C. 1914).

Insofar as these statutes lay down the basic law restricting the private economic activities of public officers and employees they constitute a sound and necessary standard of conduct. The principle which they embody in varying form—that a public servant owes undivided loyalty to the Government—is as important today as when the first of these statutes was enacted more than a century ago. However, these statutes were not adopted as a whole, but achieved their initial enactment, one at a time, over a long period, in response to specific existing evils which, from time to time were important

political issues. As a result, large areas of potential conflict of interest were left uncovered.

For example, where some of the conflict of interest statutes are restricted to "claims against the United States" (18 U.S.C. 283, 284; 5 U.S.C. 99), the courts have held that they do not protect the Government against the use of official position, influence, or inside information to aid private parties in government proceedings which involve no claim for money or property. Yet the danger of abuses of Government position exist to an equal if not greater degree in proceedings such as applications for television and radio licenses, airline routes, electrical power sites, and the like. Literally read, existing law thus makes it a crime punishable by fine and imprisonment for a postal clerk to assist his mother in filing a routine claim for a tax refund, but does not prohibit a Cabinet officer from seeking to influence an independent agency to award a license for a valuable television station to a business venture in which he shared the profits.

There are many other technical inadequacies and statutory gaps. Section 434 of title 18, born of the Civil War procurement scandals, prohibits a Government official interested in the pecuniary profits of a business entity from acting as an officer or agent of the United States for the transaction of business with that business entity. By limiting its scope to "business entities" the statute does not cover the many other organizations which deal with the Government. In addition, the concept of "transacting business," if narrowly construed—as would be likely in a criminal prosecution—would exclude many dealings with the Government, such as the clearance or rejection of license applications in the executive branch or before an independent agency.

Similar defects exist in the case of Government officials who have left Government service. Clearly such an official should be prohibited from resigning his position and "switching sides" in a matter which was before him in his official capacity. But the statutes aimed at this situation do not always hit the mark. There is nothing in the criminal statutes which would prevent the General Counsel of the Federal Power Commission from resigning to represent an unsuccessful license applicant who is contesting the Commission's decision in the courts (although such conduct might be grounds for disbarment). And, a Commission employee who was not a lawyer could, in the present state of the law, unscrupulously benefit in such a case from his "inside information" without fear of sanctions. Other similar statutory deficiencies in the present conflict of interest laws will be discussed in connection with the analysis of the bill's provisions.

But if the statutes often leave important areas unregulated, they also often serve as a possible bar to securing important personal services for the Government through excessive regulation when little or no ethical problem really exists. Fundamentally, this is because the statutes fail to take into account the role, primarily in the executive branch of our Government of the part-time or intermittent adviser whose counsel has become essential, but who cannot afford to be deprived of private benefits, or reasonably requested to deprive themselves, in the way now required by these laws. Such problems are encountered when the Government seeks the assistance of a highly skilled technician, be he scientist, accountant, lawyer, or economist.

In general, these difficulties stem from the fact that even occasional consultants are regarded as "officers or employees" of the Govern-

ment, whether or not compensated. As such, they are within the prohibitions applicable to regular full-time personnel.

A few examples illustrate some of the difficulties:

Section 281 of the Criminal Code forbids public employees from providing services to outsiders for compensation in connection with any matter in which the United States is interested and which is before a department, agency, or commission.

This section makes it difficult for a practicing lawyer to accept a part-time position with the Government. He would be in violation of section 281 if he continued to receive compensation for cases before Government agencies, or even if his law partnership receives such compensation, though he personally has no connection with any case. It is usually impractical for the law firm to withdraw from all transactions involving the Government. And almost all law firms have some tax matters, for example, as part of their normal business. The same prohibition unfairly affects accountants.

In addition, the two existing postemployment statutes raise serious problems in terms of recruiting noncareer personnel (particularly lawyers). Enacted at different times, they employ different terms and are totally uncoordinated in language or in policy. The criminal statute (18 U.S.C. 284) forbids a former employee for 2 years after his Government employment ceases to prosecute in a representative capacity any claim against the Government involving a "subject matter" directly connected with his Government job. The civil statute (5 U.S.C. 99) forbids employees of an executive department for 2 years after the end of their Government service from prosecuting in a representative capacity any claim against the United States if the claim was pending before "any department" while he was an employee.

Although too narrow in their limitation to "claims against the United States," these prohibitions are also unnecessarily broad. They should be confined to instances of "switching sides." For example, they now prohibit a lawyer who worked for the Department of Labor from subsequently representing a client in a wholly unrelated tax matter which had been before the Treasury during his Government service.

These restrictions also present grave problems to the part-time consultant who works in a partnership since he and his partners would be excluded from participation in many if not all claims against the Government—a drastic penalty for contributing to public service. It is possible to cite other examples of excessive restrictions which serve no substantial ethical purpose, but deprive the Government of access to available talent.

It is true that a large number of statutory exemptions passed at various times over the years have mitigated some of the adverse effects of these statutes upon certain specific individuals and certain categories of employees. However, no uniform standard of exemption has ever been adopted by the Congress in enacting these exemptions. Some are subject to many limitations. Some statutes unqualifiedly exempt categories of employees from all of the conflict statutes while others exempt them from some but not all of the restrictions. The resulting hodgepodge of exemptions seriously weakens the integrity of the Government personnel system.

It is manifest to the Committee on the Judiciary that the existing Federal conflict of interest laws require revision. The proper operation of a democratic government requires that officials be independent

and impartial; that Government decisions and policy be made in the proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. The attainment of one or more of these ends is impaired whenever there exists, or appears to exist, an actual or potential conflict between the private interests of a Government employee and his duties as an official. The public interest, therefore, requires that the law protect against such conflicts of interest and establish appropriate ethical standards with respect to employee conduct in situations where actual or potential conflicts exist.

It is also fundamental to the effectiveness of democratic government that, to the maximum extent possible, the most qualified individuals in the society serve its government. Accordingly, legal protections against conflicts of interest must be so designed as not unnecessarily or unreasonably to impede the recruitment and retention by the Government of those men and women who are most qualified to serve it. An essential principle underlying the staffing of our governmental structure is that its employees should not be denied the opportunity, available to all other citizens, to acquire and retain private economic and other interests, except where actual or potential conflicts with the responsibility of such employees to the public cannot be avoided.

What is more, the provisions of the Criminal Code which prohibit bribery—the payment or receipt of anything of value for official action or with intent that official action shall be influenced thereby—are central to any comprehensive codification of Federal conflict of interest statutes. When a bribe is exchanged, the parties have, in effect, conspired to deprive the United States of the honest services of its official. Such conduct is universally condemned. Nothing is more corrosive to the fabric of good government than bribery, and the criminal laws seek to preserve to the United States the value of the honest services of its officials and employees by severely punishing their sale.

The close interrelationship between the Federal bribery statutes and those prohibiting conflicts of interest is readily apparent. Sections 281 and 216 of title 18 prohibit the sale, by way of services, of confidential information, prestige, or influence which comes to an official by virtue of his office, in effect in trust. Section 434 protects the Government from the adverse consequences of being represented in business transactions by officials having an interest in the other party. Section 1914 seeks to avoid divided loyalty of Government officials by prohibiting private compensation of Government services. Indeed, the U.S. Supreme Court has stated that the prohibitions of sections 281, 216, 434, and 1914 “were directed at the crime of bribery in its open or subtle form” (*Muschany v. United States*, 324 U.S. 49 (1945)). In light of this interrelationship, the committee deems it desirable that the Federal bribery and conflict of interest laws should comprise a consistent and coordinated whole.

The nine sections of chapter 11 of title 18 of the United States Code (“Bribery and Graft”) which prohibit in general terms the bribery of Government officials (secs. 201 and 202), Members of Congress (secs. 204 and 205), judges and judicial officers (including jurors) (secs. 206, 207, and 208), and witnesses (secs. 209 and 210) vary markedly in the terms in which they define the subject of a forbidden transfer—the bribe itself—and in the character of the intent or purpose which renders

the transfer criminal. There are also notable disparities as to penalties. Under present law, for example, one who offers a juror a gift in appreciation of a verdict faces a maximum penalty of \$20,000 fine, 15 years' imprisonment, or both, in addition to mandatory disqualification for any office of honor, trust, or profit (18 U.S.C. 206). This is so even though the offer was made after the verdict was brought in and could not have influenced it.

On the other hand, a juror who brazenly solicits or accepts a bribe before verdict faces maximum punishment of only \$2,000 fine, 2 years' imprisonment, or both—and is not disqualified for office.

Other inequalities and numerous technical deficiencies could also be cited. Existing bribery law should be simplified and strengthened by eliminating unwarranted nonuniformity, reducing unnecessary duplication, and supplying omissions where needed. Confusion will be reduced by drastically cutting the number of separate sections that now deal with bribery.

LEGISLATIVE BACKGROUND

The bill is the fruit of more than 3 years of study by Subcommittee No. 5 of the Committee on the Judiciary and represents the result of subcommittee consideration of H.R. 3411 and H.R. 3412, identical measures introduced by Representatives Celler and McCulloch, respectively; H.R. 3050, introduced by Representative Lindsay; and H.R. 7139, introduced by Representative Holtzman.⁴ Its history may be reviewed briefly.

In 1957, Chairman Celler instructed the staff of the Subcommittee No. 5 to prepare a detailed study and analysis of existing Federal conflict-of-interest laws to the end that they might be revised, simplified, and coordinated to prevent improper and unethical practices, while at the same time preserving the dignity of Government service and maintaining its attractiveness to competent men and women. Parts I and II of the resulting study were issued in March 1958. They analyzed Federal statutes on conflict of interest and bribery and presented certain recommendations for amendment of these statutes. On May 19, 1958, Representative Celler introduced H.R. 12547 (85th Cong.), based on these recommendations. Parts III, IV, and V of the staff study were issued later in the same year, discussing pending legislative proposals, agency regulations, and a proposed code of ethics.

In the 86th Congress Representative Celler reintroduced H.R. 12547 as H.R. 2156. Hearings on H.R. 2156 and a number of related measures were held by the subcommittee on February 17, 18, 19, 24, 25, 26, May 25, and June 1, 1960. The subcommittee heard sponsors of the bills and representatives of many Federal agencies and of four bar associations. In the course of these hearings a committee print of H.R. 2156, engrafting certain language suggested in the testimony elicited from witnesses, was prepared and introduced in the record. The 86th Congress expired, however, before definitive action could be taken.

H.R. 3411 and H.R. 3412, the identical bills introduced by Representatives Celler and McCulloch in the present Congress, were based on the committee print of H.R. 2156, 86th Congress.

⁴ The subcommittee also considered H.R. 302 introduced by Representative Bennett, of Florida.

The history of H.R. 3050 is as follows. A penetrating 2-year study of the operation of the Federal conflict-of-interest statutes undertaken by a special committee on conflict of interest laws of the Association of the Bar of the City of New York, was completed in time for the introduction and consideration during the subcommittee's 1960 hearings of Representative Lindsay's bill, H.R. 10575 (86th Congress), which embodies the conclusions and recommendations of that distinguished group. Accordingly, Subcommittee No. 5 received extended testimony from Mr. Roswell Perkins, chairman of the bar association committee. A number of the changes appearing in H.R. 3411 and H.R. 3412 had their origin in the bar association proposal which was reintroduced in the present Congress by Representative Lindsay as H.R. 3050.

H.R. 7139 was proposed by the administration and introduced by Mr. Holtzman. In his special message to Congress in April 1961, the President stated that to meet the need for statutory reform described in his message, he was transmitting to Congress a proposed Executive Employees Standards Act,

* * * a comprehensive revision of existing conflict-of-interest statutes.

The President stated that he believes—

that this bill maintains the highest possible standard of conduct, eliminates the technical deficiencies and anachronisms of existing laws, and makes it possible for the Government to mobilize a wide range of talent and skill.

After introduction and referral of H.R. 7139, Subcommittee No. 5, on June 1 and 2, 1961, conducted further hearings on pending bribery and conflict-of-interest legislation, receiving testimony from Members of Congress and representatives of the Department of Justice, the Comptroller General of the United States, the Civil Service Commission, the President's Special Committee on Conflicts of Interest, and the Association of the Bar of the City of New York.

Subsequently the present bill, based upon and containing features of the provisions of H.R. 3411, H.R. 3412, H.R. 3050, and H.R. 7139, was reported by the subcommittee.

SUMMARY OF PROVISIONS

The bill (1) continues with strengthening changes the prohibitions of present conflict-of-interest laws, specifically including officers and employees of the District of Columbia (secs. 202–209); makes special provisions applicable to consultants and temporary employees who fall within a definition of "special Government employee" (sec. 202); consolidates and revises the laws prohibiting bribery (sec. 201), and incorporates the revised bribery and conflict-of-interest provisions in a single chapter of the Criminal Code to be captioned "Bribery, Graft, and Conflicts of Interest." Principal provisions of the bill are here summarized. (Detailed analysis will follow.)

1. Conflict-of-interest prohibitions

Existing prohibitions of 18 U.S.C. 281, 282, 283, and 216, which affect Government officials and employees who act for outside interests

in certain dealings with the Government are continued, strengthened, and modified.

(a) *Compensation in matters affecting the Government.*—Section 281 of present law prohibits Members of Congress and officers and employees of the Government from receiving compensation for services rendered before Federal agencies in matters in which the United States is interested, on pain of fine and/or imprisonment plus automatic disqualification for public office.

The bill (sec. 203) strengthens this provision by prohibiting the payment as well as the receipt of the forbidden compensation and by making clear that the prohibition applies to all compensation for services rendered while in office, irrespective of the time of its payment.

Notwithstanding the provisions of section 203, the bill permits an officer or employee, with approval of the official responsible for an appointment to his position, to represent or assist, with or without compensation, his parent, spouse, child, or any person for whom he is serving as a personal fiduciary, unless the matter involved is one in which he has participated personally and substantially as a Government employee or which is the subject of his official responsibility.

Application of section 203 to "special Government employees" (consultants and temporary employees as defined in sec. 202) is limited to matters in which they have participated personally and substantially as Government employees, matters which, within 2 years, have been the subject of their "official responsibility" (defined in sec. 202), and, if they serve more than 15 days in any period of 365 consecutive days, matters pending in the department or agency in which they are serving.

(b) *Members of Congress practicing in the Court of Claims.*—Section 282 of present law, which prohibits Members of Congress from practicing in the Court of Claims on pain of fine and/or imprisonment, plus automatic disqualification for public office is continued without change.

(c) *Activities in matters affecting the Government.*—Section 283 of present law prohibits officers and employees of the United States, including officers or employees of the Senate or the House of Representatives, otherwise than in the proper discharge of their official duties, from acting as agents or attorneys, or aiding or assisting, in the prosecution of claims against the United States, or receiving gratuities, or shares of interest in such claims, in consideration of assistance in their prosecution, on pain of fine and/or imprisonment. The bill (sec. 205) continues the prohibition against acting as an agent or attorney in the prosecution of claims against the Government.

As has been noted, however, the courts have held that the term "claim against the United States" is limited to a demand against the United States for money or property (*United States v. Bergson*, 119 F. Supp. 459 (D.C., D.C. 1954); see also *United States v. 679.19 Acres of Land*, 113 F. Supp. 590 (D.C.N.D. 1953), *Morgenthau v. Barrett*, 108 F. 2d 481 (C.A.D.C. 1939)). The effect of this limitation renders present section 283 inadequate. There is a clear public interest in preventing Government employees from allying themselves actively with private parties in the multitude of matters and proceedings in which, although they may not be claims against the United States, the Government has a direct and substantial interest. Accordingly, the bill additionally prohibits officers and employees of the Govern-

ment from acting as agent or attorney for anyone before a Federal agency or a court in connection with any matter in which the United States has a direct and substantial interest.

Notwithstanding these prohibitions, section 205 permits officers and employees to take uncompensated action consistent with the faithful performance of their duties to aid persons subject to disciplinary proceedings. It also permits them, as does section 203, with approval of the official responsible for appointments to their position, to represent certain close relatives and persons for whom they are serving as personal fiduciaries, except in matters in which they have participated as Government employees or which are the subject of their official responsibility.

Finally, because the giving of testimony might be held to be a form of assistance, the bill makes clear that section 205 does not prevent giving testimony under oath or making statements required to be made under penalty for perjury or contempt.

As in section 203, application of section 205 to "special Government employees" (consultants and temporary employees as defined in sec. 202) is limited to matters in which they have participated personally and substantially as Government employees, matters which, within 2 years have been the subject of their "official responsibility" (defined in sec. 202), and, if they serve more than 15 days in any period of 365 consecutive days, matters pending in the department or agency in which they are serving.

(d) *Procuring Government contracts.*—Section 216 of present law prohibits the payment to or acceptance by any Member of Congress or officer, employee, or agent of the United States of any money or thing of value for procuring or aiding to procure a Government contract, on pain of fine and/or imprisonment and automatic disqualification for public office. This section empowers the President to "declare void any such contract or agreement."

The bill continues both these provisions. Section 203, as noted above, prohibits payments to and receipts by Members of Congress and Federal officers and employees for services rendered before agencies in matters in which the United States has a direct and substantial interest, and section 201 (bribery of public officials and witnesses) prohibits payments to and receipts by such officials for or because of official acts or with intent that official acts shall be influenced thereby. What is more, section 218 empowers the President to declare void any contract or other transaction in relation to which there has been a final conviction for any violation of the bribery and conflict-of-interest laws. Present section 216 is therefore unnecessary and is repealed.

(e) *Retired officers.*—Under present law, retired officers of the Armed Forces of the United States, while not on active duty, occupy a peculiar and complex position. They are not, by reason of such status, subject to the provisions of section 281 or 283, but provisos leave them subject to prohibitions against (1) selling anything to the United States through the Department in whose service they hold a retired status (sec. 281) and (2) within 2 years after retirement prosecuting any claim against the United States involving such Department, or (3) prosecuting any claim against the United States involving any subject matter with which they were directly connected while in active-duty status (sec. 283). The problems involved in the peculiar status of retired officers of the Armed Forces while not on active duty

are of a complexity that requires further specialized study for solution. The committee therefore determined to omit this class of persons from the bill. Accordingly, the bill provides (sec. 206) that sections 203 and 205 shall not apply to a retired officer of the Armed Forces of the United States while not on active duty. What is more, the bill does not repeal present section 281 or 283 insofar as they may apply to such retired officers. In consequence, the present legal status of this group is wholly unaffected by the bill.

(f) *Postemployment*.—Under present law, postemployment prohibitions of conflicts of interest are contained in two statutes. Section 284 of title 18 prohibits Federal employees on penalty of fine and or imprisonment, for 2 years after termination of their employment, from prosecuting claims against the United States involving any subject matter directly connected with their employment or duties. In addition, section 99 of title 5 of the United States Code, a non-criminal statute, declares that it shall not be lawful for former employees of Federal departments, within 2 years after their employment has ceased, to prosecute any claim against the United States which was pending in any such department during the period of their employment. These provisions are unsatisfactory. They limit their prohibition to the prosecution of "claims against the United States" for money or property, leaving persons who quit the Government free to involve themselves in any other type of proceeding, irrespective of the fact that they may have participated directly in the very same proceeding on behalf of the Government. On the other hand, they are too broad, prohibiting the prosecution of claims even where the ex-employee had no official connection with their subject matter. Finally, the language of present section 284 referring to a "subject matter directly connected with which such person was so employed or performed duty" is imprecise and difficult to apply.

The bill makes important changes in these postemployment prohibitions. Section 207(a) prohibits a former Government employee of the executive branch, an independent agency, or the District of Columbia from at any time acting as agent or attorney for anyone in connection with any particular matter before the Government in which the United States has a direct and substantial interest and in which he participated personally and substantially as a Government employee. This prohibition applies to judicial as well as to agency proceedings. It is a lifetime bar, preventing the employee from "switching sides" to the detriment of his Government-employer.

In addition, section 207(b) of the bill prohibits such a former Government employee, within 2 years after his last employment has ceased, from appearing personally before any court or Federal agency for a private party in connection with any particular matter in which the United States has a direct and substantial interest and which, within 2 years preceding the termination of his employment, was under his official responsibility (as defined in sec. 202).

Subject to an exception to be noted below, section 207 of the bill applies to "special Government employees" as well as to regular officers and employees of the Government.

Under the bill, present section 99 of title 5, the civil prohibition limited to departmental employees and indiscriminately applicable to all claims pending in any department during their incumbency, is repealed (p. 20, lines 6-7).

(g) *Partners*.—The status and obligations of partners of Government employees under the conflict of interest statutes is not specified in present law. Under the Canons of Ethics of the American Bar Association (canons 6, 36, and 37), and at common law (see *United States v. Standard Oil Co.*, 136 F. Supp. 345 (D.C.N.Y., 1955), the activities of partners are to some extent imputed to each other and to some extent disqualify non-Government partners from activities with which Government partners have become identified. The unsettled state of the law has given rise to serious confusion as to the precise limits of the doctrine of imputation. For this reason, the bill (sec. 207 (c) and (d)) prescribes the disqualification of partners of Government employees and former Government employees in the executive branch, the independent agencies, and the District of Columbia, and the limits on such disqualification.

Section 207(c) provides that for 2 years after the termination of a Government employee's service his partners must refrain from any activities from which the ex-Government partner is prohibited from engaging by section 207(a). This means that if a Government employee or special Government employee has participated directly and substantially in a matter in which the United States is directly and substantially interested not only is he personally prohibited from representing private parties in that particular matter, but his firm is barred with respect thereto for 2 years following his departure from Government.

In addition, section 207(d) provides that during the continued service of a partner as a Government employee or special Government employee, his firm is barred from acting in particular matters in which the Government partner has at any time participated, or which is the subject of his official responsibility.

Finally, in order to mark the limits of the imputation doctrine, section 207 provides that a partner of a present or former Government employee or special Government employee in the executive branch, an independent agency, or the District of Columbia, shall as such be subject to the provisions of sections 203, 205, and 207 only as expressly provided in subsections (c) and (d) of section 207. In short, after a Government employee leaves the Government, his firm must for 2 years stay out of matters in which he has participated for the Government. And while the Government partner remains in the Government, his firm must stay out of matters in which he participates or has participated or which are under his official responsibility. However, it is not the intent of the provisions of section 207 (c) and (d) that the fact that a partner of a Government employee or former Government employee is also a partner in a firm in which the Government employee or former Government employee is not a member should disqualify the latter firm. Existing law with respect to the rights and obligations of partners of officers and employees and former officers and employees of the United States in the legislative and judicial branches is left unaffected by the bill.

(h) *Acts affecting personal financial interests*.—Present section 434 prohibits officers or employees of the United States from transacting business on behalf of the United States with any business entity of which they are officers, agents, or members, or in whose pecuniary profits or contracts they are directly or indirectly interested, on penalty of fine and/or imprisonment. The bill (sec. 208) continues this prohibition, but with significant changes.

The present law unduly restricts the activities to which it relates to "transaction of business" and fails to cover other personal and substantial participation in matters in which the employee has a personal interest. It also fails to proscribe participation in matters in which the employee's family, business associate or prospective employer has a financial interest. Accordingly, the bill prohibits officers and employees of the United States, including special Government employees, from personal and substantial participation in any particular matter in the consequence of which, to his knowledge, he, a member of his immediate family, a business associate, or any person with whom he is negotiating concerning employment, has a financial interest.

However, because it is unfair to require the Government employee to act at his peril in drawing the line between substantial and trivial interests, the bill further provides that the prohibition shall not apply if the officer or employee first advises the official responsible for appointments to his position of the nature and circumstances of the matter and makes full disclosure of his interest in it and receives in advance a written determination that the interest is too insubstantial to be likely to affect the integrity of the service, or if by general rule or regulation published in the Federal Register, the financial interest has been exempted from the prohibition as too remote or inconsequential.

(i) *Salary to be paid only by the United States.*—Section 1914 of present law prohibits Government officers and employees from receiving from private sources any salary "in connection with" their Government service, and also prohibits private parties from contributing to or supplementing Government salaries, all on pain of fine and/or imprisonment. The bill continues these prohibitions with certain changes.

The language of present section 1914 is unsatisfactory in two respects: first, the expression "in connection with" is imprecise; second, the language prohibiting the receipt of supplements to a salary and that prohibiting the payment or supplementation differ in detail.

Accordingly, the bill (sec. 209) prohibits the receipt from private sources of any salary, or contribution to or supplementation of salary, *as compensation for services* as an officer or employee of the United States Government in the executive branch, of any independent agency, or of the District of Columbia, and also prohibits the payment, contribution or supplementation of a Government salary "under circumstances which would make its receipt a violation".

Further, the bill makes clear that continued participation in any bona fide pension, retirement, group life, health or accident insurance, profit-sharing, stock bonus, or other employee welfare or benefit plan maintained by a former employer does not violate section 209, and also exempts the payment or acceptance of contributions, awards, and other expenses under the Government Employees Training Act (72 Stat. 327; 5 U.S.C. 2301-2319).

Finally, the provisions of section 209 are inapplicable to special Government employees and Government employees serving without compensation.

2. *Special Government employees*

No present conflict-of-interest statute of general application makes explicit recognition of or separate provision for consultants or other

noncareer employees of the Government who assume temporary duties either on a full-time or intermittent basis. The result has been that such employees have had to serve under the full rigor of existing general prohibitions, or have ignored these prohibitions, or have been made the subject of the numerous nonuniform ad hoc exemptions enacted to facilitate their recruitment.

To correct this increasingly intolerable situation the bill creates a class of "special Government employees" to whom special conflict-of-interest rules are made applicable. Section 202 of the bill defines the term "special Government employee" as an officer or employee of the executive branch of the Government or of any independent agency or of the District of Columbia who is employed for not more than 130 days in any 365-day period to perform temporary duties.

Under the bill, a "special Government employee" is prohibited from the following conduct, and no other:

(a) During his employment, he must refrain from rendering services or accepting compensation for services in relation to particular matters in which the United States has a direct and substantial interest (secs. 205, 203), and from prosecuting claims against the United States (sec. 205) only in relation to any particular matter—

(1) in which he has at any time participated personally and substantially as a Government employee, or

(2) which is or within 2 years has been a subject of his official responsibility, or

(3) if he serves more than 15 days in any 365-day period, which is pending in the department or agency in which he is serving.

(b) Like other Government employees he must refrain from participating as a Government employee in any particular matter in which he, his family, business associate, or prospective employer has a financial interest, unless he has reported the interest and been advised in writing by proper authority that the interest is too insubstantial to affect the integrity of the service, or unless the interest has been exempted by general rule published in the Federal Register.

(c) Like other former Government employees he must, after his employment has ceased—

(1) forever refrain from acting as attorney or agent for anyone in a particular matter in which the United States has a direct and substantial interest and in which he at any time participated personally and substantially as a Government employee, and

(2) for 2 years refrain from appearing personally before any court or Federal agency for a private party in connection with any particular matter in which the United States is directly and substantially interested and which, within 2 years preceding the termination of his employment, was under his official responsibility.

(d) His partners, like the partners of other Government employees—

(1) must refrain for 2 years after the termination of his Government service from acting as agent or attorney for any private party in any particular matter in which the United States is directly and substantially interested and in which he participated personally and substantially as a Government employee, and

(2) must, during the continuance of his Government service, refrain from acting in any particular matter in which he has so

participated as a Government employee, or which is under his official responsibility.

(e) The special Government employee is not covered by section 209 which prohibits the supplementation of Government salary from private sources.

(f) Finally, a special exemptive provision declares that a present or former special Government employee may aid or assist another person in the performance of work under a contract with or for the benefit of the United States if the head of his department or agency certifies in writing that the national interest requires such aid or assistance. The certification must be published in the Federal Register. This provision appears in section 205 and is stated in terms of a conditional exemption from sections 203, 205, and 207.

3. *Bribery*

Sections 201 through 213 of present title 18 of the United States Code comprise nine general bribery sections and four sections prohibiting bribery in special cases. These sections, which apply to different categories of public officials, vary widely in their definition of the character of the bribe, the intent needed to make a payment unlawful, and the penalty. The bill combines into a single section (201) and renders uniform the disparate provisions of the nine general bribery sections (secs. 201 and 202, Government employees; secs. 204 and 205, Members of Congress; secs. 206, 207, and 208, judges and judicial officers, including jurors; and secs. 209 and 210, witnesses), and repeals sections 203 (district attorneys and marshals), 211 (revenue officers), and 212 and 213 (customs officers or employees). A consequence of this consolidation is to render uniform the law describing a bribe and prescribing the intent or purpose which makes its transfer unlawful. A further consequence is greater uniformity in penalties.

Section 201(a) of the bill defines "public official," "person who has been selected to be a public official," and "official act."

"Public official" is broadly defined to mean Member of Congress, any officer or employee of or person acting for or on behalf of the United States in an official function, or a juror.

"Person who has been selected to be a public official" means any person who has been nominated or appointed to be a public official, or has been officially informed that he will be so nominated or appointed.

"Official act" means any decision or action pending before or which may come before a public official.

Section 201 (b) and (c) respectively prohibit the corrupt giving to or receipt by a public official or person selected to be a public official of anything of value—

(1) to influence an official act,

(2) to influence commission of or collusion in any fraud on the United States, or

(3) to induce violation of official duty.

Section 201 (d) and (e) respectively prohibit the corrupt giving to or receipt by a witness of anything of value to influence testimony under oath or absence from a trial, hearing, or other proceeding. Testimony before any committee of either House or both Houses of Congress and any agency or commission is specifically covered. In the interest of uniformity, the bill substitutes intent to influence or be

influenced for the present requirement of sections 209 and 210 for an "agreement or understanding" for influence.

Bribery under section 201 (b), (c), (d), or (e) of the bill is made uniformly subject to maximum penalty of three times the value of the bribe or \$20,000, whichever is greater, 15 years imprisonment, or both, and discretionary disqualification for public office.

In addition, the bill (sec. 201 (f), (g), (h), and (i)) adopts the policy of five of the nine present general bribery provisions (sec. 205: acceptance by Member of Congress; sec. 206: offer to judge or judicial officer; sec. 207: acceptance by judge; sec. 208: acceptance by judicial officer; sec. 210: acceptance by witness) that payments to or receipts by public officials or witnesses "for" or "because of" an official act or testimony or absence from a trial, hearing, or proceeding at which testimony was to be given should also be prohibited. Accordingly section 201 (f) and (g) respectively prohibit payments to and receipts by public officials for or because of official acts and, section 201 (h) and (i) similarly prohibit payments to or receipts by witnesses for or because of their testimony or absence. Violation of the provisions of section 201 (f), (g), (h), and (i) of the bill is made uniformly subject to lesser maximums of \$10,000 fine and/or 2 years imprisonment.

Section 201(j) makes clear that subsections (d), (e), (h), and (i) do not prohibit witness fees or payment of reasonable travel and subsistence costs or for time lost, nor in the case of expert witnesses, a reasonable fee for time spent in preparation, appearance, and testifying.

4. Penalties

With the exception of section 99 of title 5, for which no penalty is provided, each of the present conflict-of-interest statutes is criminal in nature. Conviction carries fine and/or imprisonment, with maximums ranging from \$500 and 6 months in the case of section 1914, to \$10,000 and 2 years in the case of sections 281, 282, and 216, which also prescribe automatic disqualification for public office. Other maximums are: sections 283 and 284, \$10,000 and 1 year; and section 434, \$2,000 and 2 years.

Sections 203 and 204 of the bill continue the present maximums, including automatic disqualification, found in 18 U.S.C. 281 and 282, and present section 216 is repealed. The same maximums, but without provision for disqualification for office, are incorporated in section 205, the postemployment provisions of section 207, and section 208 (which take the place, respectively, of 18 U.S.C. 283, 284, and 434). The new provisions of section 207 which affect partners, as well as section 209 (which takes the place of 18 U.S.C. 1914), incorporate lower maximums of \$5,000 and 1 year.

Conviction under the nine present bribery statutes of general application (18 U.S.C. 201, 202, 204, 205, 206, 207, 208, 209, and 210) carries maximum penalties ranging from \$2,000 fine and 2 years' imprisonment in cases involving witnesses (secs. 209 and 210) or the acceptance of bribes by judicial officers, including jurors (sec. 208) to \$20,000 fine and 15 years' imprisonment, plus automatic disqualification for public office, in cases of offers of bribes to judges or judicial officers (sec. 206), or their acceptance by judges (sec. 207). The maximums applicable to bribery of Government employees (secs. 201 and 202) and Members of Congress (secs. 204 and 205) are a fine of three times the amount or value of the bribe and 3 years' imprisonment, plus automatic disqualification for public office of the recipient

of the bribe (secs. 202 and 205), but not of the person paying it (secs. 201 and 204).

The bill eliminates this disparity in penalties. It makes distinction only between bribes exchanged corruptly, with intent that action shall be influenced (sec. 201 (b), (c), (d), and (e)), which merit severe penalty, and payments "for or because of" action (sec. 201 (f), (g), (h), and (i)), which merit lesser penalty.

In the former case, the bill combines existing maximums, providing a fine of not more than \$20,000 or three times the value of the bribe, and imprisonment for not more than 15 years, or both, and disqualification for public office is made discretionary.

In the case of the lesser offense, the bill provides maximum fine of \$10,000, 2 years; imprisonment, or both.

SECTIONAL ANALYSIS

SECTION 1 (A)

Section 1(a) of the bill would amend chapter 11 of title 18, United States Code, which deals with bribery and graft, by combining several separate bribery sections of limited application (present secs. 201 through 213) into one comprehensive section (201) and by adding several new sections dealing with conflicts of interest (202 through 209 and 218). The latter sections would replace existing conflict-of-interest sections (281, 282, 283, 284, 434, and 1914) scattered throughout chapters 15, 23, and 93 of title 18. The existing conflict-of-interest sections would be repealed by section 2 of the bill, except that sections 281 and 283 would continue in effect (as the same sections of ch. 15) to the extent that they apply to retired officers of the Armed Forces.

Chapter 11 of title 18, United States Code, as so amended, would be captioned, "Bribery, Graft, and Conflicts of Interest."

The following references to section 201, et seq., relate to proposed new sections of title 18 which would be enacted by section 1(a) of this bill.

Bribery of public officials and witnesses (sec. 201)

This section substitutes for the principal sections dealing with bribery now contained in sections 201 to 213 of chapter 11 of title 18, one comprehensive statute applicable to all persons performing activities for or on behalf of the United States. Varying terminology is used in the different statutes presently in force. Although in many instances the courts have construed these differing terms as having the same meaning, uniformity will be assured by enacting one statute using the same terms for all bribery situations. The bill does not limit in any way the broad interpretation that the courts have given to the bribery statutes; rather, the intent is to insure that this broad interpretation shall be given universal application.

Subsection (a).—"Public official" is given a comprehensive definition, covering all Government officers and employees, including jurors. The term is then used in the substantive subsections to indicate those to whom the substantive provisions are applicable, thereby achieving a uniform application of the statute to all persons acting for the Government. The phrase—

person acting for or on behalf of the United States, or any department, agency, or branch of Government thereof, in any official function, under or by authority of any such department, agency, or branch of Government—

is used, as in the present sections 201 and 202, to include within the statutory coverage those persons who perform activities for the Government, as, for example, through a contractual arrangement. (See *United States v. Levine*, 129 F. 2d 745, for a judicial construction of the comparable language in the present law.)

The definition of “person who has been selected to be a public official” is self-explanatory. It is included in order to set forth the point at which a prospective public official comes within the statutory coverage.

The definition of “official act” is based upon the present sections 201 202, and is meant to include any activity that a public official undertakes for the Government.

Subsection (b).—This subsection sets forth the provisions applicable to all persons who attempt to bribe any public official. The phrase “anything of value” is used to designate that which is offered or given to an official, instead of the more detailed phraseology used in the present section 201, because the words “anything of value” comprehend anything that conceivably can be offered or given as a bribe. The three alternate “intents” with which a bribe can be offered or given are the same as those forbidden by the present section 201. The first one, “to influence any official act,” is broad enough to cover a bribe offered or given to one official even though the official action sought to be influenced may be that which a second official must take. The word “corruptly” which is also used in obstruction-of-justice statutes (18 U.S.C. 1503–1505), means with wrongful or dishonest intent. This subsection also forbids an attempt to influence a public official by an offer or promise of something of value which will be to the advantage of somebody else in whose well-being he may be interested.

Subsection (c).—This subsection sets forth the provisions applicable to all public officials who solicit, accept, or agree to accept bribes. Like subsection (b), it comprehends the three alternate purposes for which a bribe may be sought, rather than being limited to the single purpose of being influenced in an official act, as in the existing section 202. The language used in subsection (c) emphasizes that it is the purpose for which the recipient knows the bribe is offered or given when he solicits, receives, or agrees to receive it which is determinative of criminality. Some courts have given this interpretation to the present section 202. (See, e.g., *Woelfel v. United States*, 237 F. 2d 484, 488; *Whitney v. United States*, 99 F. 2d 327, 331.)

Subsections (d) and (e).—These subsections apply the foregoing provisions to witnesses in any proceeding or before any officers authorized to take testimony, to the extent that the bribe is paid or accepted with intent to influence the witness’ sworn testimony or to influence him not to give testimony.

The proposed penalties for violation of subsections (b), (c), (d), and (e) are a maximum fine of \$20,000 or three times the value of the bribe, whichever is greater, or a maximum imprisonment of 15 years, or both. Although this is greater than the maximum penalties imposed by existing bribery statute other than title 18, United States Code,

sections 206 and 207 (which deal with bribery of judges), it expresses maximums only and refers the matter of degree of guilt to the judiciary. Additionally, the court is given discretion to disqualify the person convicted from holding public office. Present law makes such disqualification mandatory in the case of offers of bribes to judges or judicial officers (sec. 206), acceptance of bribes by judges (sec. 207), and acceptance of bribes by Members of Congress (sec. 205), or Government employees (sec. 202).

Subsections (f), (g), (h), and (i).—These subsections adopt the policy of five of the nine present general bribery sections (205, 206, 207, 208, and 210). They forbid offers, payments, solicitations, and receipt of things of value “for or because of” the recipient’s past or future “official acts”. The phrase “otherwise than as provided by law for the proper discharge of official duty” is used in subsections (f) and (g) in order to permit lawful payments for the performance of official acts. The conduct which is forbidden has the appearance of evil and the capacity of serving as a cover for evil. For these subsections a lesser penalty of a maximum fine of \$10,000 or maximum imprisonment of 2 years, or both, is provided. Only payments directly to a public official or a witness, and not to other persons or entities in whose welfare the public official or witness may be interested, are forbidden by these subsections.

Subsection (j).—This subsection makes it clear that the subsections dealing with witnesses will not prohibit payments to witnesses otherwise proper and lawful.

Subsection (k).—This subsection makes it clear that the provisions of this section are not meant to supersede the obstruction-of-justice statutes.

Definitions (sec. 202)

Section 2 sets forth definitions of two key terms used in the conflict-of-interest provisions of the proposed bill.

This section defines a “special Government employee,” as an officer or employee of the executive branch, of any independent agency, or of the District of Columbia, who serves on an intermittent or temporary basis for 130 days or less in any period of 365 consecutive days. Officers of the Reserve and the National Guard are classified as “special Government employees” only while on active duty solely for training. These officers would lose their status as special Government employees when assigned to extended active duty in excess of 130 days. Enlisted men are excluded from the coverage of the bill.

“Official responsibility,” as used in sections 203, 205, and 207, is defined in substance as the authority to approve, disapprove, or otherwise direct Government action.

Compensation to Members of Congress, officers, and others, in matters affecting the Government (sec. 203)

The proposed section 203 would replace 18 U.S.C. 281, which prohibits a Member of Congress or an officer or employee of the Government from receiving compensation for services in relation to any matter in which the United States is interested and which is before any Government agency. Section 203 would contain the same basic prohibitions, extended and clarified, but would apply to a special Government employee only with respect to certain matters.

The term "Delegate," in describing the congressional level (18 U.S.C. 204, 205, 281) is deleted as obsolete—both here and in section 204.

A comparison of the two sections follows:

Section 281 fails to penalize persons who make the payments the receipt of which is prohibited. Section 203(b) would penalize such persons.

Section 281 does not specifically apply to officers and employees of the legislative and judicial branches. Section 203 would apply to these officers and employees, as well as to those of the District of Columbia.

Section 281 literally penalizes receipt during Government employment for preemployment services. Section 203 would not do so.

Section 281 fails to prohibit preemployment receipt or agreement to receive, or postemployment receipt of, compensation with respect to services to be rendered or actually rendered during the period of Government employment. Section 203 would correct this omission.

Section 281 prohibits the receipt or agreement to receive compensation in certain matters. Section 203 would penalize also the asking, demanding, soliciting, or seeking of such compensation.

The list of proceedings to which the disqualification of section 281 attaches is extended in section 203 to include "application" and "request for a ruling or other determination" to make clear that the enumeration is comprehensive of all matters that come before a Federal department or agency. Also, the word "particular" would be inserted before "other matter" to emphasize that the restriction applies to a specific case or matter and not to a general area of activity.

A "direct and substantial" interest has been substituted in section 203 for the section 281 phrase "directly or indirectly interested." Since this is a criminal statute, it is considered that the recommended language will constitute a clearer test of interest on the part of the Government than the present vague phrase.

Subsection (c), which has no counterpart in section 281, would make the prohibition of section 203 applicable to a special Government employee only in relation to a matter (1) in which he has participated personally and substantially as a Government employee, or (2) which within 2 years has been a subject of his official responsibility, or (3) which is pending in the agency in which he is serving. A special Government employee who serves no more than 15 days during a period of 365 consecutive days would be subject only to clauses (1) and (2).

In short, section 203 would broaden the prohibitions of section 281, the class of persons affected and the category of proceedings to which the disqualification applies, extend the penalty to the giving as well as the receiving of compensation, and apply a rule to special Government employees which is somewhat less restrictive than that applied to regular Government employees. Neither present section 281 nor proposed section 203 prohibits services in courts or before Congress or its committees

Practice in Court of Claims by Members of Congress (sec. 204)

Section 204 is substantially identical to present 18 U.S.C. 282.

Activities of officers and employees in claims against and other matters affecting the Government (sec. 205)

Section 205, which would replace 18 U.S.C. 283, is comparable to, but applies to a wider range of proceedings than, 18 U.S.C. 283, which prohibits a Government employee from acting as an attorney or agent for prosecuting or aiding in the prosecution of any claim against the United States, or receiving any interest in such a claim in consideration of his assistance. Section 205 would continue the prohibition against the receipt of interest in a claim for assistance in its prosecution but would otherwise limit the disqualification to acting as agent or attorney. At the same time section 205 would broaden the category of proceedings to which the disqualification applies to any proceeding or other matter in which the United States is a party or has a direct and substantial interest and which is before any department, agency, court, court-martial, officer, or any civil, military, or naval commission.

Section 283 expresses a public policy that it is improper for a Government employee to prosecute claims against the Government in a representative capacity. The evident reason for this restriction is to protect the integrity of Government actions by preventing its employees from using actual or supposed influence in support of private causes. Since the term "claims against the United States" may be judicially construed as excluding the many important proceedings before the Government which do not involve a claim for money or property, the amendment of section 283 to embrace a wide range of matters in which the Government has an interest is consistent with the underlying purpose of the prohibition. It appears to be equally important to protect the integrity of the Government decision in the many matters which do not represent in the strict sense a claim for money or property, as, for example, an application for a license to operate a broadcasting station. Although section 281 prohibits conduct of this nature when compensated, as would the proposed section 203, it is also important that this type of representative activity be prohibited when it is not compensated. Section 205 would prohibit uncompensated activity when it involves acting as an attorney or agent for another. Section 205 also would apply to representative activity before a court, an area not covered by 18 U.S.C. 281.

The reason for limiting the disqualification to acting as attorney or agent is that the inclusion of the term "aids or assists" would permit a broad construction embracing conduct not involving a real conflict of interest. However, acting as attorney or agent, which would afford the opportunity for the use of official influence, would continue to be prohibited. Representation, if compensated, would be prohibited by both sections 203 and 205.

In addition the following points may be noted:

Neither 18 U.S.C. 283 nor section 205 of the bill applies to Members of Congress. Section 205 would apply to officers or employees in the executive, legislative, or judicial branches, in any Government agency, or in the District of Columbia.

The penalty clause in section 283 provides for a fine of not more than \$10,000 or imprisonment for not more than 1 year, or both. Section 205 would increase the penalty by providing for a maximum of 2 years' imprisonment.

An exception to section 205 would permit an employee to take uncompensated action in assistance of another employee who is the subject of personnel proceedings.

Another limited exception (to both secs. 203 and 205) not present in section 281 nor 283 would permit an employee, with approval of the Government official responsible for appointments to his position, to assist his parent, spouse, or child, or a person for whom the employee is serving as a personal fiduciary, except in matters in which he has participated personally and substantially as a Government employee, or which are the subject of his official responsibility. It should be noted that fiduciary compensation is generally subject to court approval, so that the likelihood of abuse in these circumstances is minimal.

A present or former special Government employee also would be permitted to assist another person in the performance of work under a contract with the United States, provided that the head of the employee's agency certifies that the national interest requires such assistance and the certification is published in the Federal Register. This exception permits a special Government employee, with express written advance approval and certification as to the national interest, to assist a Government contractor in the performance of his work for the Government. In the case of a scientist employed by a private company and serving on a Government advisory board his responsibilities with his company may practically compel him to assist his company in the performance of work under a Government contract. And it is undoubtedly in the interests of the United States that he should so assist. In such a case, the permitted exception is needed and available. The protections surrounding the granting of an exception are sufficient to guarantee against abuse.

Section 205 also would permit a Government employee to give testimony or make statements under oath in circumstances in which such conduct otherwise might be construed as a violation of the prohibitions of the section.

A special Government employee would be subject to the prohibitions of section 205 to exactly the same extent as he would be subject to those of section 203.

Exemption of retired officers of the Armed Forces (sec. 206)

Section 206 provides that sections 203 and 205 do not apply to any person because of his status as a retired officer of the Armed Forces not on active duty and not otherwise an officer or employee of the United States. The result is that the present legal status of retired officers not on active duty remains unchanged by the bill. In addition, sections 203 and 205 would be inapplicable to any person excepted by statute. The comparable existing provisions of title 18 (secs. 281 and 283) contain similar exemption.

Disqualification of former officers and employees; disqualification of partners (sec. 207)

Section 207 replaces 18 U.S.C. 284, which prohibits a former officer or employee from acting as counsel, attorney or agent for prosecuting a claim against the United States involving any subject matter directly connected with which he was employed. The existing prohibition is limited to 2 years after the Government employment ceases. Section 207(a), which is the proposed counterpart of the present section 284,

prohibits a former employee from knowingly acting as attorney or agent for anyone in connection with a matter in which the United States is a party or has a direct and substantial interest and in which the former employee participated personally and substantially as a Government employee.

Section 207(a) would disqualify the former employee with respect to a much larger class of proceedings than does section 284. In *United States v. Bergson*, 119 F. Supp. 459 (D.D.C. 1954) a "claim against the United States," in section 284, was narrowly construed to mean a demand for money or property. Section 207(a) would substitute "proceeding, contract, claim, controversy," etc., in which the United States is a party or has a direct and substantial interest, for "claims against the United States."

A "participation" test would be substituted in section 207(a) for the present test involving "directly connected" employment in section 284. The disqualification would apply to matters in which the former employee—

participated personally and substantially as a Government employee, through approval, disapproval, recommendation, decision, the rendering of advice, investigation or otherwise.

The prohibition of section 284 is limited to 2 years after termination of employment. Section 207(a) imposes a permanent prohibition.

Section 207(b) additionally prohibits, for 2 years, a former Federal employee from personally appearing as attorney or agent before a court, department, or agency of the Government with respect to matters which were under his official responsibility while in the Government. Section 284 now imposes a similar prohibition, but only in the narrow area of "claims" against the Government as that term is defined in the *Bergson* case.

Section 207 would be applicable to special Government employees as well as to regular officers and employees in the executive branch, the independent agencies, and the District of Columbia.

The penalty paragraph of section 284 provides for a fine of not more than \$10,000, or not more than 1 year's imprisonment, or both. The maximum term of imprisonment is increased by section 207 to 2 years' imprisonment (except as to partners, as to which see *infra*).

Section 207 would impose restrictions upon partners of present and former employees in the executive branch, the independent agencies, and the District of Columbia, including present and former special Government employees. Section 207(c) would prohibit for 2 years a partner of a former employee from engaging in activity which the former employee is himself prohibited from engaging in by subsection (a). A partner of a present employee would be prohibited by 207(d) from representing anyone in connection with any judicial or other proceeding or other matter in which the United States is a party or has a direct and substantial interest and in which the Government employee is participating or has participated personally and substantially or which is the subject of his official responsibility.

The penalty for a violation of subsection (c) or (d) is a fine of not more than \$5,000 or imprisonment for not more than 1 year, or both. Existing law governing the rights and obligations of partners of present or former employees of the legislative and judicial branches is left unchanged.

Acts affecting a personal financial interest (sec. 208)

Section 208 supplants 18 U.S.C. 434 which disqualifies Government officials who are pecuniarily interested in business entities from transacting business with such entities on behalf of the Government. Section 208(a) would prohibit not merely "transacting business" with a business entity in which the Government employee is interested but would bar any significant participation in Government action in the consequences of which to his knowledge the employee has a financial interest.

The employee would be disqualified equally with respect to participation in Government actions or proceedings in which, to his knowledge, his spouse, child, partner, business organization in which he is serving, or person with whom or organization with which he is negotiating for employment has such an interest.

Section 208 would apply to officers or employees of the executive branch, the independent agencies, and the District of Columbia, as well as to special Government employees.

Subsection (b) would make subsection (a) inapplicable (1) if the employee advises the Government official responsible for appointments to the employee's position of the nature and circumstances of the matter and of the financial interest involved and receives a written determination that the interest is too insubstantial to affect the integrity of the services expected from the employee, or (2) if the financial interest has been exempted by general rule or regulation as too inconsequential to affect the integrity of employee's services.

Subsection (b) affords the Government ample protection, yet provides a system whereby the Government may utilize the services of its employees in situations in which under the present law a de minimis financial interest in a matter may either (1) compel disqualification under criminal penalties, resulting in obvious detriment to the Government, or (2) result in disregard for the law.

The penalty provision of section 434 is a maximum fine of \$2,000 or imprisonment for not more than 2 years, or both. Section 208 would increase the maximum fine to \$10,000.

Salary of Government officials and employees payable only by United States (sec. 209)

Section 209 varies only to a minor extent in its substantive prohibitions from the section which it would replace, 18 U.S.C. 1914, which prohibits a Government employee from receiving compensation for his Government service from private sources and also prohibits any nongovernmental person or organization from paying or supplementing the employee's Government salary for such service.

Section 1914 prohibits the receipt of private "salary" in connection with an employee's Government services. Section 209 prohibits the receipt of salary, "or any contribution to or supplementation of salary," to conform with the equivalent prohibition imposed upon the payor by section 209.

Whereas the prohibition of section 1914 applies to private salary paid "in connection with" the Government services of the employee, section 209 substitutes the phrase "as compensation for" his services as an officer or employee in order to emphasize the intent that the prohibition is against private payment made expressly for services

rendered to the Government. The phrase "in connection with" is vague and capable of an indefinitely broad interpretation.

The enumeration of persons forbidden to pay a Government employee for his Government services is extended by section 209 to include a "partnership" and "other organization," and "an individual" is substituted for "a person." The modified enumeration is more comprehensive than in section 1914 and makes clear the intent that any kind of organization, whether profit or nonprofit, should be subject to the prohibition of the section.

Participation in employee welfare or benefit plans maintained by a former employer would be permitted by subsection (b). The prohibitions of section 209 would be made inapplicable by subsection (c) to a special Government employee and to any person serving without compensation, and by subsection (d) to contributions and awards authorized by the Government Employees Training Act.

The inclusion of the specified exceptions is not to be construed as limiting the right of an employee to receive compensation from private sources except as payment for his services as a Government official. The section does not bar private employment or other activities not connected with the Government position of the official and not proscribed by other statutory prohibitions.

The penalty provision of section 1914 is increased in section 209 from a fine of not more than \$1,000 or imprisonment for not more than 6 months, or both, to a maximum fine of \$5,000 or maximum imprisonment of 1 year or both.

SECTION 1 (B), (C), (D), AND (E)

Subsection (b) redesignates sections 214 and 215 of chapter 11 of title 18 as sections 210 and 211, and subsection (d) redesignates sections 217 through 222 as sections 212 through 217. This redesignation is necessitated by the consolidation of certain of the bribery provisions and the inclusion of the conflict of interest sections in chapter 11.

Subsection (c) repeals sections 216 and 223 of chapter 11. The functions of section 216 are redistributed among new sections 201, 203, and 218. Section 223 has become obsolete by virtue of the abolition of the Homeowners' Loan Corporation to whose employees it applies.

Subsection (e) further amends chapter 11 of title 18 by adding at the end thereof a new section 218 entitled "Voiding transactions in violation of chapter; recovery by the United States." Section 218, which has no general counterpart in existing conflict-of-interest or bribery statutes, is based on the last sentence of present section 216 which authorizes the President to declare void any Government contract consummated in violation of that section. It would provide that the President or an agency head, under Presidential regulations, may void any contract, loan, grant, subsidy, license, right, privilege, permit, franchise, decision, etc., in relation to which there has been a conviction of any violation of chapter 11, and that the United States shall be entitled to recover in addition to any penalty prescribed by law or contract the amount expended, etc., by the Government. This is in addition to other remedies provided by law.

SECTION 2

Existing criminal conflict-of-interest statutes (18 U.S.C. 281, 282, 283, 284, 434, and 1914) are expressly repealed by the bill, except that sections 281 and 283 are continued in effect insofar as they may apply to retired officers of the Armed Forces. Existing exemptions from the title 18 conflict-of-interest sections which are repealed would be preserved as exemptions from the proposed counterpart sections of title 18, except to the extent that the exemptions affect officers or employees of the executive branch, of an independent agency, or of the District of Columbia, as to whom they no longer would be applicable. The new standards established by the bill itself for special Government employees is intended as a complete substitute for the present ad hoc exemptions of persons in that classification.

SECTION 3

Section 3 of the bill repeals section 190 of the Revised Statutes (5 U.S.C. 99), which relates to postemployment activities of former department employees, since proposed section 207 of title 18, will contain in a single section all postemployment prohibitions.

SECTION 4

The act would take effect 90 days after its enactment. The reason for deferring the effective date is to permit a period of adjustment or changeover to the new rules. This deferment would be of particular importance for special Government employees who under present exempting legislation may be completely or partially exempt from any conflict-of-interest restraints.

In compliance with clause 3 of rule XIII of the House of Representatives, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman).

New provisions proposed by H.R. 8140

CHAPTER 11—BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

Sec.¹

- 201. *Bribery of public officials and witnesses.*
- 202. *Definitions.*
- 203. *Compensation of Members of Congress, officers and others, in matters affecting the Government.*
- 204. *Practice in Court of Claims by Members of Congress.*
- 205. *Activities of officers and employees in claims against and other matters affecting the Government.*
- 206. *Exemption of retired officers of the Armed Forces.*
- 207. *Disqualification of former officers and employees in matters connected with former duties or official responsibilities; disqualification of partners.*
- 208. *Acts affecting a personal financial interest.*
- 209. *Salary of Government officials and employees payable only by United States.*
- 210. *Offer to procure appointive office.*
- 211. *Acceptance or solicitation to obtain appointive public office.*
- 212. *Offer of loan or gratuity to bank examiner.*
- 213. *Acceptance of loan or gratuity by bank examiner.*
- 214. *Offer for procurement of Federal Reserve bank loan and discount of commercial paper.*
- 215. *Receipt of commissions or gifts for procuring loans.*
- 216. *Receipt or charge of commissions or gifts for farm loan or land bank transactions.*
- 217. *Acceptance of consideration for adjustment of farm indebtedness.*
- 218. *Voiding transactions in violation of chapter; recovery by the United States.*

¹ References are to title 18 of the United States Code, unless otherwise noted.

Comparable provisions of existing law repealed by H.R. 8140, except as otherwise noted

CHAPTER 11—BRIBERY AND GRAFT

[Sec.¹

- [201. Offer to officer or other person.
- [202. Acceptance or solicitation by officer or other person.
- [203. Acceptance or demand by district attorneys or marshals or their assistants.
- [204. Offer to Member of Congress.
- [205. Acceptance by Member of Congress.
- [206. Offer to judge or judicial officer.
- [207. Acceptance by judge.
- [208. Acceptance or solicitation by judicial officer.
- [209. Offer to witness.
- [210. Acceptance by witness.
- [211. Offer of gratuity to revenue officer.
- [212. Offer or threat to customs officer or employee.
- [213. Acceptance or demand by customs officer or employee.
- [214. Offer to procure appointive public office.
- [215. Acceptance or solicitation to obtain appointive public office.
- [216. Procurement of contract by officer or Member of Congress.
- [217. Offer of loan or gratuity to bank examiner.
- [218. Acceptance of loan or gratuity by bank examiner.
- [219. Offer for procurement of Federal Reserve bank loan and discount of commercial paper.
- [220. Receipt of commissions or gifts for procuring loans.
- [221. Receipt or charge of commissions or gifts for farm loan, land bank, or small business transactions.
- [222. Acceptance of consideration for adjustment of farm indebtedness.
- [223. Home Owners' Loan Corporation transactions.]

Comparable provisions of existing law repealed by H.R. 8140, except as otherwise noted

§ 201. Bribery of public officials and witnesses

(a) For the purpose of this section:

“public official” means Member of Congress, or Resident Commissioner, either before or after he has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror; and

“person who has been selected to be a public official” means any person who has been nominated or appointed to be a public official, or has been officially informed that he will be so nominated or appointed; and

“official act” means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in his official capacity, or in his place of trust or profit.

(b) Whoever, directly or indirectly, corruptly gives, offers or promises anything of value to any public official or person who has been selected to be a public official, or offers or promises any public official or any person who has been selected to be a public official to give anything of value to any other person or entity, with intent—

§ 201. Offer to officer or other person.

Whoever promises, offers, or gives any money or thing of value, or makes or tenders any check, order, contract, undertaking, obligation, gratuity, or security for the payment of money or for the delivery or conveyance of anything of value, to any officer or employee or person acting for or on behalf of the United States, or any department or agency thereof, in any official function, under or by authority of any such department or agency or to any officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or both Houses thereof, with intent to influence his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit, or with intent to influence him to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States, or to induce him to do or omit to do any act in violation of his lawful duty, shall be fined not more than three times the amount of such money or value of such thing or imprisoned not more than three years, or both.

[This section shall not apply to violations of section 212 of this title.]

【§ 202. Acceptance or solicitation by officer or other person.

【Whoever, being an officer or employee of, or person acting for or on behalf of the United States, in any official capacity, under or by virtue of the authority of any department or agency thereof, or an officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or of both Houses thereof, asks, accepts, or receives any money, or any check, order, contract, promise, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, with intent to have his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit, influenced thereby, shall be fined not more than three times the amount of such money or value of such thing or imprisoned not more than three years, or both; and shall forfeit his office or place and be disqualified from holding any office of honor, trust, or profit under the United States.

【This section shall not apply to violations of section 213 of this title.】

【§ 203. Acceptance or demand by district attorneys or marshals or their assistants.

【Whoever, being connected in any capacity with the office of United States Attorney or United States Marshal, directly or indirectly, demands, receives or accepts any fee or compensation for the performance of any official service, other than is provided by law, shall be fined not

(1) to influence any official act; or
(2) to influence such public official or person who has been selected to be a public official to commit or aid in committing, or collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

(3) to induce such public official or such person who has been selected to be a public official to do or omit to do any act in violation of his lawful duty, or

(c) Whoever, being a public official or person selected to be a public official, directly or indirectly, corruptly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself or for any other person or entity, in return for:

(1) being influenced in his performance of any official act; or

(2) being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

(3) being induced to do or omit to do any act in violation of his official duty; or

(d) Whoever, directly or indirectly, corruptly gives, offers, or promises anything of value to any person, or offers or promises such person to give anything of value to any other person or entity, with intent to influence the testimony under oath or affirmation of such first-mentioned person as a wit-

New provisions proposed by H.R. 8140

ness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or with intent to influence such person to absent himself therefrom; or

(e) Whoever, directly or indirectly, corruptly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself or for any other person or entity in return for being influenced in his testimony under oath or affirmation as a witness upon any such trial, hearing, or other proceeding, or in return for absenting himself therefrom—

Shall be fined not more than \$20,000 or three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than fifteen years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.

(f) Whoever, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly gives, offers, or promises anything of value to any public official, former public official, or person selected to be a public official, for or because of any official act performed or to be performed by such public official, former public official, or person selected to be a public official; or

(g) Whoever, being a public official, former public official, or person selected to be a public official, otherwise than as

Comparable provisions of existing law repealed by H.R. 8140, except as otherwise noted

more than \$500 or imprisoned not more than five years, or both.】

【§ 204. Offer to Member of Congress.

【Whoever promises, offers, or gives any money or thing of value, or makes or tenders any check, order, contract, undertaking, obligation, gratuity, or security for the payment of money or for the delivery or conveyance of anything of value, to any Member of either House of Congress, or Delegates to Congress, or Resident Commissioner, either before or after he has qualified, or to any person with his consent, connivance, or concurrence, with intent to influence his action, vote, or decision on any question, matter, cause, or proceeding which may at any time be pending in either House of Congress, or before any committee thereof, or which by law may be brought before him in his capacity as such Member, Delegate, or Resident Commissioner, shall be fined not more than three times the amount of such money or value of such thing or imprisoned not more than three years or both.】

【§ 205. Acceptance by Member of Congress.

【Whoever, being a Member of, or Delegate to, or a Resident Commissioner, either before or after he has qualified, directly or indirectly, asks, accepts, receives, or agrees to receive, any money or thing of value, or any promise, check, order, contract, undertaking, obligation, gratuity, or security for the payment of money or for the delivery or conveyance of anything of value to him or to any person with his consent, connivance, or concurrence,

for his attention to, or services, or with the intent to have his action, vote, or decision influenced on any question, matter, cause, or proceeding, which may at any time be pending in either House of Congress or before any committee thereof, or which by law may be brought before him in his capacity as such Member, Delegate, or Resident Commissioner, shall be fined not more than three times the amount asked, accepted, or received or imprisoned not more than three years, or both; and shall forfeit his office or place, and be disqualified from holding any office of honor, trust, or profit under the United States.】

【§206. Offer to judge or judicial officer.

【Whoever, directly or indirectly, gives or offers any money or thing of value, or any promise or agreement therefor, or any other bribe, to any judge, juror, referee, arbitrator, appraiser, assessor, auditor, master, trustee, receiver, United States Commissioner, or other person authorized by any law of the United States to hear or determine any question, matter, cause, proceeding, or controversy because of or with intent to influence his action, vote, opinion, or decision thereon, shall be fined not more than \$20,000 or imprisoned not more than fifteen years, or both; and shall be disqualified from holding any office of honor, trust, or profit under the United States.】

provided by law for the proper discharge of official duty, directly or indirectly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself for or because of any official act performed or to be performed by him; or

(h) Whoever, directly or indirectly, gives, offers, or promises anything of value to any person, for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or for or because of his absence therefrom; or

(i) Whoever, directly or indirectly, asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself for or because of the testimony under oath or affirmation given or to be given by him as a witness upon any such trial, hearing, or other proceeding, or for or because of his absence therefrom—

Shall be fined not more than \$10,000 or imprisoned for not more than two years, or both.

(j) Subsections (d), (e), (h), and (i) shall not be construed to prohibit the payment or receipt of witness fees provided by law, or the payment, by the party upon whose behalf a witness is called and receipt by a witness, of the reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance at any such trial, hearing, or proceeding, or, in the case of expert witnesses, involving a technical or professional opinion, a reasonable fee

New provisions proposed by H.R. 8140

for time spent in the preparation of such opinion, and in appearing and testifying.

(k) The offenses prescribed in this section are separate from and in addition to those prescribed in sections 1503, 1504, and 1505 of this title.

Comparable provisions of existing law repealed by H.R. 8140, except as otherwise noted

【§ 207. Acceptance by judge.

【Whoever, being a judge of the United States, accepts or receives any sum of money or other bribe, present or reward, or any promise, check, order, contract, obligation, gift or security for the payment of money, or for the delivery or conveyance of anything of value, because of or with intent to be influenced in any opinion, judgment or decree in any suit, controversy, matter or cause pending before him, shall be fined not more than \$20,000 or imprisoned not more than fifteen years, or both; and shall be disqualified from holding any office of honor, trust or profit under the United States.**】**

【§ 208. Acceptance or solicitation by judicial officer.

【Whoever, being a juror, referee, arbitrator, appraiser, assessor, auditor, master, trustee, receiver, United States commissioner, or other person authorized by any law of the United States to hear or determine any question, matter, cause, controversy, or proceeding, asks, receives, or agrees to receive, any money or thing of value, or any promise or agreement therefor, because of or with intent to be influenced in his vote, opinion, action, judgment, or decision, shall be fined not more than \$2,000 or imprisoned not more than two years, or both.**】**

【§ 209. Offer to witness.

【Whoever, directly or indirectly, gives or offers any money or thing of value, or any promise or agreement therefor, or any other bribe to any person being, or about to be, a witness upon a trial, hearing, or other proceeding, before any court or any officer authorized by the laws of the United States to hear evidence or take testimony, upon any agreement or understanding that his testimony shall be influenced thereby, or that he will absent himself from the trial, hearing or other proceeding, shall be fined not more than \$2,000 or imprisoned not more than two years, or both.】

【§ 210. Acceptance by witness.

【Whoever, being, or about to be, a witness upon a trial, hearing, or other proceeding, before any court or any officer authorized by the laws of the United States to hear evidence or take testimony, receives, or agrees or offers to receive, a bribe, upon any agreement or understanding that his testimony shall be influenced thereby, or that he will absent himself from the trial, hearing, or other proceeding, or because of such testimony, or such absence, shall be fined not more than \$2,000 or imprisoned not more than two years, or both.】

【§ 211. Offer of gratuity to revenue officer.

【Whoever, being engaged in the importation into the United States or any goods, wares, or merchandise, or being interested as principal, clerk, or agent in the entry thereof, gives or offers, to any officer of the revenue, any present of money or thing of value, shall be fined not more than \$5,000 or imprisoned not more than two years, or both.】

Comparable provisions of existing law repealed by H.R. 8140, except as otherwise noted

【§ 212. Offer or threat to customs officer or employee.

【Whoever gives, offers, or promises any money or thing of value, directly or indirectly, to any officer or employee of the United States in consideration of or for any act or omission contrary to law in connection with or pertaining to the importation, appraisement, entry, examination, or inspection of merchandise or baggage, or of the liquidation of the entry thereof, or by threats or demands or promises of any character attempts improperly to influence or control any such officer or employee of the United States as to the performance of his official duties, shall be fined not more than \$5,000 or imprisoned not more than two years, or both.

【Evidence, satisfactory to the court, of such giving, offering, or promising to give, or attempting to influence or control, shall be prima facie evidence that the same was contrary to law.】

【§ 213. Acceptance or demand by customs officer or employee.

【Whoever, being an officer or employee of the United States, solicits, demands, exacts, or receives from any person, directly or indirectly, except in payment of the duties or exactions fixed by law, any gratuity, money, or thing of value, for any service performed under the customs laws, or in consideration of any official act or the omission thereof, in connection with or pertaining to the importation, entry, inspection or examination, or appraisement of merchandise or baggage, shall be fined

not more than \$5,000 or imprisoned not more than two years, or both.

【Evidence, satisfactory to the court, of such soliciting, demanding, exacting, or receiving shall be prima facie evidence that the same was contrary to law.】

【§ 216. Procurement of contract by officer or Member of Congress.

【Whoever, being a Member of or Delegate to Congress, or a Resident Commissioner, either before or after he has qualified, or being an officer, employee, or agent of the United States, directly or indirectly takes, receives, or agrees to receive, any money or thing of value, for giving, procuring or aiding to procure to or for any person, any contract from the United States or from any officer, department or agency thereof; or

【Whoever, directly or indirectly, offers, gives, or agrees to give any money or thing of value for procuring or aiding to procure, any such contract—

【Shall be fined not more than \$10,000 or imprisoned not more than two years, or both; and be disqualified from holding any office of honor, profit, or trust under the United States.

【The President may declare void any such contract or agreement.】

§ 223. Home Owners' Loan Corporation transactions.

【Whoever, whether a person, partnership, association, or corporation, directly or indirectly solicits, contracts for, charges, or receives, or attempts to solicit, contract for, charge, or receive, from any person applying to the Home Owners' Loan Corporation for a loan, (1) any fee,

New provisions proposed by H.R. 8140

Comparable provisions of existing law repealed by H.R. 8140, except as otherwise noted

charge, or other consideration, whether bond or cash, except ordinary fees authorized and required by the said Corporation for services actually rendered for examination and perfection of title, appraisal, and like necessary services, or (2) any moneys, check, note, or other form of obligation, representing payment of any difference which may exist between the market value and the par value of the bonds of the Home Owners' Loan Corporation, shall be fined not more than \$5,000 or imprisoned not more than two years, or both. **]**

§ 202. Definitions

(a) For the purpose of sections 203, 205, 207, 208, and 209 of this title the term "special Government employee" shall mean an officer or employee of the executive branch of the United States Government, of any independent agency of the United States or of the District of Columbia, who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis. Notwithstanding section 29 (c) and (d) of the Act of August 10, 1956 (70A Stat. 632; 5 U.S.C. 304 (c) and (d)), a Reserve officer of the Armed Forces, or an officer of the National Guard of the United States, unless otherwise an officer or employee of the United States, shall be classified as a special Government employee while on active duty solely for training. A Reserve officer of the Armed Forces or an officer of the National Guard of the United States who is

-serving a period of extended active duty in excess of one hundred and thirty days shall be classified as an officer of the United States within the meaning of section 203 and sections 205 through 209 and 218. The terms "officer or employee" and "special Government employee" as used in sections 203, 205, 207 through 209, and 218, shall not include enlisted members of the Armed Forces.

(b) For the purposes of sections 203, 205, and 207 of this title, the term "official responsibility" means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action.

§ 203. Compensation to Members of Congress, officers and others, in matters affecting the Government

(a) Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receives or agrees to receive, or asks, demands, solicits, or seeks, any compensation for any services rendered or to be rendered either by himself or another—

(1) at a time when he is a Member of Congress or a Resident Commissioner, either before or after he has qualified; or

(2) at a time when he is an officer or employee of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States, including the District of Columbia, in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substan-

§ 281. Compensation to Members of Congress, officers, and others in matters affecting the Government.

Whoever, being a Member of or Delegate to Congress, or a Resident Commissioner, either before or after he has qualified, or the head of a department, or other officer or employee of the United States or any department or agency thereof, directly or indirectly receives or agrees to receive, any compensation for any services rendered or to be rendered, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter in which the United States is a party or directly or indirectly interested, before any department, agency, court martial, officer, or any civil, military, or naval commission, shall be fined not more than \$10,000 or imprisoned not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States.

tial interest, before any department, agency, court-martial, officer, or any civil, military, or naval commission, or

(b) Whoever, knowingly, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly gives, promises, or offers any compensation for any such services rendered or to be rendered at a time when the person to whom the compensation is given, promised, or offered, is or was such a Member, Commissioner, officer, or employee—

Shall be fined not more than \$10,000 or imprisoned for not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States.

(c) A special Government employee shall be subject to subsection (a) only in relation to a particular matter (1) in which he has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or (2) which is or within two years has been a subject of his official responsibility, or (3) which is pending in the department or agency of the Government in which he is serving: Provided, That clause (3) shall not apply in the case of a special Government employee who serves no more than fifteen days during any period of three hundred and sixty-five consecutive days.

[Retired officers of the armed forces of the United States, while not on active duty, shall not by reason of their status as such be subject to the provisions of this section. Nothing herein shall be construed to allow any retired officer to represent any person in the sale of anything to the Government through the department in whose service he holds a retired status.

[This section shall not apply to any person because of his membership in the National Guard of the District of Columbia nor to any person specially excepted by Act of Congress.]²

§ 204. Practice in Court of Claims by Members of Congress

Whoever, being a Member of Congress or a Resident Commissioner, either before or after he has qualified practices in the Court of Claims, shall be fined not more than \$10,000 or imprisoned for not more than two years, or both, and shall be incapable of holding any office of honor, trust, or profit under the United States.

§ 205. Activities of officers and employees in claims against and other matters affecting the Government

Whoever, being an officer or employee of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States, including the District of Columbia, otherwise than in the proper discharge of his official duties—

(1) acts as agent or attorney for prosecuting any claim against the United States, or receives any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim, or

(2) acts as agent or attorney for anyone before any department, agency, court, court-martial, officer, or any civil, military, or naval commission in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other matter in which the United States is a party or has a direct and substantial interest—
Shall be fined not more than \$10,000 or imprisoned for not more than two years, or both.

² Section 281 will continue to apply to retired officers of the armed forces of the United States.

§ 282. Practice in Court of Claims by Members of Congress.

【Whoever, being a Member of or Delegate to Congress, or a Resident Commissioner, either before or after he has qualified, practices in the Court of Claims, shall be fined not more than \$10,000 or imprisoned not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States.】

§ 283. Officers or employees interested in claims against the Government.

【Whoever, being an officer or employee of the United States or any department or agency thereof, or of the Senate or House of Representatives, acts as an agent or attorney for prosecuting any claim against the United States, or aids or assists in the prosecution or support of any such claim otherwise than in the proper discharge of his official duties, or receives any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim, shall be fined not more than \$10,000 or imprisoned not more than one year, or both.】

【Retired officers of the armed forces of the United States, while not on active duty, shall not by reason of their status as such be subject to the provisions of this section. Nothing herein shall be construed to allow any such retired officer within two years next after his retirement to act as agent or attorney for prosecuting or assisting in the prosecution of any claim against the United States involving the department in whose service he holds a retired status, or to allow any such retired officer to act

See sec. 2 of H.R. 8140.

New provisions proposed by H.R. 8140

A special Government employee shall be subject to the preceding paragraphs only in relation to a particular matter (1) in which he has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or (2) which is or within two years has been a subject of his official responsibility, or (3) which is pending in the department or agency of the Government in which he is serving: Provided, That clause (3) shall not apply in the case of a special Government employee who serves no more than fifteen days during any period of three hundred and sixty-five consecutive days.

Nothing herein prevents an officer or employee from taking uncompensated action, not inconsistent with the faithful performance of his duties, to aid or assist any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings with respect to those proceedings.

Nothing herein or in section 203 prevents an officer or employee, including a special Government employee, from acting, with or without compensation, as agent or attorney for or otherwise aiding or assisting his parents, spouse, child, or any person for whom he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except in those matters in which he has participated personally and substantially as a Government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which are the subject of his official responsibility, provided that the

Comparable provisions of existing law repealed by H.R. 8140, except as otherwise noted

as agent or attorney for prosecuting or assisting in the prosecution of any claim against the United States involving any subject matter with which he was directly connected while he was in an active-duty status.

[This section shall not apply to any person because of his membership in the National Guard of the District of Columbia nor to any person specially excepted by enactment of Congress.]³

Government official responsible for appointment to his position approves.

Nothing herein or in section 203 or 207 prevents a present or former special Government employee from aiding or assisting another person in the performance of work under a contract with or for the benefit of the United States provided that the head of such special Government employee's department or agency shall certify in writing that the national interest requires such aid or assistance.

Such certification shall be published in the Federal Register.

Nothing herein prevents an officer or employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

§ 206. Exemption of retired officers of the Armed Forces

Sections 203 and 205 of this title shall not apply to a retired officer of the Armed Forces of the United States while not on active duty and not otherwise an officer or employee of the United States, or to any person specially excepted by Act of Congress.

[§ 281 * * *

Retired officers of the armed forces of the United States, while not on active duty, shall not by reason of their status as such be subject to the provisions of this section.]

[§ 283 * * *

Retired officers of the armed forces of the United States, while not on active duty, shall not by reason of their status as such be subject to the provisions of this section.]

[§ 284. Disqualifications of former officers and employees in matters connected with former duties.

[Whoever, having been employed in any agency of the United States, including commissioned officers assigned to duty in such agency, within two years after the time when

§ 207. Disqualification of former officers and employees in matters connected with former duties or official responsibilities; disqualification of partners

(a) Whoever, having been an officer or employee of the executive branch of the United States Government, of any in-

³ Section 283 will continue to apply to retired officers of the armed forces of the United States. See sec. 2 of H.R. 8140,

New provisions proposed by H.R. 8140

dependent agency of the United States, or of the District of Columbia, including a special Government employee, after his employment has ceased, knowingly acts as agent or attorney for, or aids or assists anyone in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest and in which he participated personally and substantially as an officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, while so employed, or

(b) Whoever, having been so employed, within two years after his last employment has ceased, appears personally before any court or department or agency of the Government as agent, or attorney for, anyone other than the United States in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or directly and substantially interested, and which was under his official responsibility as an officer or employee of the Government at any time within a period of two years prior to the termination of his employment—

Shall be fined not more than \$10,000 or imprisoned for not more than two years, or both.

(c) Whoever, being a partner of a former officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the

Comparable provisions of existing law repealed by H.R. 8140, except as otherwise noted

such employment or service has ceased, prosecutes or acts as counsel, attorney, or agent for prosecuting, any claims against the United States involving any subject matter directly connected with which such person was so employed or performed duty, shall be fined not more than \$10,000 or imprisoned not more than one year, or both.】

District of Columbia, including a former special Government employee, engages, during a period of two years following the termination of the latter's employment by the Government, in any activities which such former officer or employee of the Government or special Government employee is himself prohibited from engaging in by subsection (a) hereof; or

(d) Whoever, being a partner of such an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, acts as agent or attorney for, or aids or assists anyone other than the United States, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest and in which such officer or employee of the Government or special Government employee participates or has participated personally and substantially as a Government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of his official responsibility—

Shall be fined not more than \$5,000, or imprisoned not more than one year, or both.

A partner of a present or former officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, or of a present or former special Government employee shall as such be subject to the provisions of sections 203, 205, and 207 of this title only as expressly provided in subsections (c) and (d) of this section.

New provisions proposed by H.R. 8140

§ 208. *Acts affecting a personal financial interest*

(a) *Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a Government action, proceeding, or other particular matter in which, to his knowledge, he, his spouse, child, partner, business organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest,*

Shall be fined not more than \$10,000, or imprisoned not more than two years, or both.

(b) *Subsection (a) hereof shall not apply (1) if the officer or employee first advises the Government official responsible for appointment to his position of the nature and circumstances of the action, proceeding, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee, or (2) if, by general rule or regulation published in the Federal Register, the financial interest has been exempted from the requirements of clause (1) hereof as being too remote or too incon-*

Comparable provisions of existing law repealed by H.R. 8140, except as otherwise noted

【§ 434. Interested persons acting as Government agents.

【Whoever, being an officer, agent or member of, or directly or indirectly interested in the pecuniary profits or contracts of any corporation, joint-stock company, or association, or of any firm or partnership, or other business entity, is employed or acts as an officer or agent of the United States for the transaction of business with such business entity, shall be fined not more than \$2,000 or imprisoned not more than two years, or both.】

[§ 1914. Salary of Government officials and employees payable only by United States.

[Whoever, being a Government official or employee, receives any salary in connection with his services as such an official or employee from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality; or

[Whoever, whether a person, association, or corporation, makes any contribution to, or in any way supplements the salary of, any Government official or employee for the services performed by him for the Government of the United States—

[Shall be fined not more than \$1,000 or imprisoned not more than six months, or both.**]**

sequential to affect the integrity of Government officers' or employees' services.

§ 209. *Salary of Government officials and employees payable only by United States*

(a) *Whoever receives any salary, or any contribution to or supplementation of salary, as compensation for his services as an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality; or*

Whoever, whether an individual, partnership, association, corporation, or other organization pays, or makes any contribution to, or in any way supplements the salary of, any such officer or employee under circumstances which would make its receipt a violation of this subsection—

Shall be fined not more than \$5,000 or imprisoned not more than one year, or both.

(b) *Nothing herein prevents an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States, or of the District of Columbia, from continuing to participate in a bona fide pension, retirement, group life, health or accident insurance, profit-sharing, stock bonus, or other employee welfare or benefit plan maintained by a former employer.*

(c) *This section does not apply to a special Government employee or to an officer or employee of the Government serving without compensation, whether or not he is a special Government employee, or to any person paying, contributing to, or supplementing his salary as such.*

- (d) *This section does not prohibit payment or acceptance of contributions, awards, or other expenses under the terms of the Government Employees Training Act (Public Law 85-507, 72 Stat. 327; 5 U.S.C., 2301-2319, July 7, 1958).*
- § 210. Offer to procure appointive public office.
- § 211. Acceptance or solicitation to obtain appointive public office.
- § 212. Offer of loan or gratuity to bank examiner.
- § 213. Acceptance of loan or gratuity by bank examiner.
- § 214. Offer for procurement of Federal Reserve bank loan and discount of commercial paper.
- § 215. Receipt of commissions or gifts for procuring loans.
- § 216. Receipt or charge of commissions or gifts for farm loan, land bank, or small business transactions.
- § 217. Acceptance of consideration for adjustment of farm indebtedness.
- § 218. *Voiding transactions in violation of chapter; recovery by the United States.*

In addition to any other remedies provided by law the President or, under regulations prescribed by him, the head of any department or agency involved, may declare void and rescind any contract, loan, grant, subsidy, license, right, permit, franchise, use, authority, privilege, benefit, certificate, ruling, decision, opinion, or rate schedule awarded, granted, paid, furnished, or published, or the performance of any service or transfer or delivery of any thing to, by or for any

- § 214] Offer to procure appointive public office.
- § 215] Acceptance or solicitation to obtain appointive public office.
- § 217] Offer of loan or gratuity to bank examiner.
- § 218] Acceptance of loan or gratuity by bank examiner.
- § 219] Offer for procurement of Federal Reserve bank loan and discount of commercial paper.
- § 220] Receipt of commissions or gifts for procuring loans.
- § 221] Receipt or charge of commissions or gifts for farm loan, land bank, or small business transactions.
- § 222] Acceptance of consideration for adjustment of farm indebtedness.

agency of the United States or officer or employee of the United States or person acting on behalf thereof, in relation to which there has been any violation of this chapter, and the United States shall be entitled to recover in addition to any penalty prescribed by law or in a contract the amount expended or the thing transferred or delivered on its behalf, or the reasonable value thereof.

Sec. 2 of H.R. 8140

* * * All exemptions from the provisions of sections 281, 282, 283, 284, 434, or 1914 of title 18 of the United States Code heretofore created or authorized by statute which are in force on the effective date of this Act shall, on and after that date, be deemed to be exemptions from sections 203, 204, 205, 207, 208, or 209, respectively, of title 18 of the United States Code except to the extent that they affect officers or employees of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, as to whom they are no longer applicable.

[R.S. Sec. 190. It shall not be lawful for any person appointed after the first day of June, one thousand eight hundred and seventy-two, as an officer, clerk or employé in any of the Departments, to act as counsel, attorney, or agent for prosecuting any claim against the United States which was pending in either of said Departments while he was such officer, clerk, or employé, nor in any manner, nor by any means, to aid in the prosecution of any such claim, within two years next after he shall have ceased to be such officer, clerk, or employé.] (5 U.S.C. 99)

House Calendar No. 102

87TH CONGRESS
1ST SESSION

H. R. 8140

[Report No. 748]

IN THE HOUSE OF REPRESENTATIVES

JULY 13, 1961

MR. CELLER introduced the following bill; which was referred to the Committee on the Judiciary

JULY 20, 1961

Reported with amendments, referred to the House Calendar, and ordered to be printed

[Omit the part struck through and insert the part printed in italic]

A BILL

To strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) so much of chapter 11 of title 18 of the United
4 States Code as precedes section 214 is amended to read as
5 follows:

House Calendar No. 102

87TH CONGRESS
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H. R. 8140

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1 “CHAPTER 11—BRIBERY, GRAFT, AND CONFLICTS

2 OF INTEREST

“Sec.

“201. Bribery of public officials and witnesses.

“202. Definitions.

“203. Compensation of Members of Congress, officers and others, in matters affecting the Government.

“204. Practice in Court of Claims by Members of Congress.

“205. Activities of officers and employees in claims against and other matters affecting the Government.

“206. Exemption of retired officers of the Armed Forces.

“207. Disqualification of former officers and employees in matters connected with former duties or official responsibilities; disqualification of partners.

“208. Acts affecting a personal financial interest.

“209. Salary of Government officials and employees payable only by United States.

~~“210. Offer to procure appointive office.~~

“210. *Offer to procure appointive public office.*

“211. Acceptance or solicitation to obtain appointive public office.

“212. Offer of loan or gratuity to bank examiner.

“213. Acceptance of loan or gratuity by bank examiner.

“214. Offer for procurement of Federal Reserve bank loan and discount of commercial paper.

“215. Receipt of commissions or gifts for procuring loans.

~~“216. Receipt or charge of commissions or gifts for farm loan or land bank transactions.~~

“216. *Receipt or charge of commissions or gifts for farm loan, land bank, or small business transactions.*

“217. Acceptance of consideration for adjustment of farm indebtedness.

“218. Voiding transactions in violation of chapter; recovery by the United States.

3 “§ 201. Bribery of public officials and witnesses

4 “(a) For the purpose of this section:

5 “‘public official’ means Member of Congress, or
6 Resident Commissioner, either before or after he has
7 qualified, or an officer or employee or person acting for
8 or on behalf of the United States, or any department,
9 agency or branch of Government thereof, in any official
10 function, under or by authority of any such depart-

1 ment, agency, or branch of Government, or a juror;
2 and

3 “‘person who has been selected to be a public offi-
4 cial’ means any person who has been nominated or
5 appointed to be a public official, or has been officially
6 informed that he will be so nominated or appointed; and

7 “‘official act’ means any decision or action on any
8 question, matter, cause, suit, proceeding or controversy,
9 which may at any time be pending, or which may by
10 law be brought before any public official, in his official
11 capacity, or in his place of trust or profit.

12 “(b) Whoever, directly or indirectly, corruptly gives,
13 offers or promises anything of value to any public official or
14 person who has been selected to be a public official, or offers
15 or promises any public official or any person who has been
16 selected to be a public official to give anything of value to
17 any other person or entity, with intent—

18 “(1) to influence any official act; or

19 “(2) to influence such public official or person who
20 has been selected to be a public official to commit or aid
21 in committing, or collude in, or allow, any fraud, or
22 make opportunity for the commission of any fraud, on
23 the United States; or

24 “(3) to induce such public official or such person

1 who has been selected to be a public official to do or omit
2 to do any act in violation of his lawful duty, or

3 “(c) Whoever, being a public official or person selected
4 to be a public official, directly or indirectly, corruptly asks,
5 demands, exacts, solicits, seeks, accepts, receives, or agrees
6 to receive anything of value for himself or for any other per-
7 son or entity, in return for:

8 “(1) being influenced in his performance of any
9 official act; or

10 “(2) being influenced to commit or aid in com-
11 mitting, or to collude in, or allow, any fraud, or make
12 opportunity for the commission of any fraud, on the
13 United States; or

14 “(3) being induced to do or omit to do any act in
15 violation of his official duty; or

16 “(d) Whoever, directly or indirectly, corruptly gives,
17 offers, or promises anything of value to any person, or offers
18 or promises such person to give anything of value to any
19 other person or entity, with intent to influence the testimony
20 under oath or affirmation of such first-mentioned person as a
21 witness upon a trial, hearing, or other proceeding, before
22 any court, any committee of either House or both Houses of
23 Congress, or any agency, commission, or officer authorized
24 by the laws of the United States to hear evidence or take

1 testimony, or with intent to influence such person to absent
2 himself therefrom; or

3 “(e) Whoever, directly or indirectly, corruptly asks,
4 demands, exacts, solicits, seeks, accepts, receives, or agrees
5 to receive anything of value for himself or for any other
6 person or entity in return for being influenced in his testi-
7 mony under oath or affirmation as a witness upon any such
8 trial, hearing, or other proceeding, or in return for absenting
9 himself therefrom—

10 “Shall be fined not more than \$20,000 or three times
11 the monetary equivalent of the thing of value, whichever is
12 greater, or imprisoned for not more than fifteen years, or
13 both, and may be disqualified from holding any office
14 of honor, trust, or profit under the United States.

15 “(f) Whoever, otherwise than as provided by law for
16 the proper discharge of official duty, directly or indirectly
17 gives, offers, or promises anything of value to any public
18 official, former public official, or person selected to be a pub-
19 lic official, for or because of any official act performed or to
20 be performed by such public official, former public official,
21 or person selected to be a public official; or

22 “(g) Whoever, being a public official, former public
23 official, or person selected to be a public official, otherwise
24 than as provided by law for the proper discharge of official

1 duty, directly or indirectly asks, demands, exacts, solicits,
2 seeks, accepts, receives, or agrees to receive anything of
3 value for himself for or because of any official act performed
4 or to be performed by him; or

5 “(h) Whoever, directly or indirectly, gives, offers, or
6 promises anything of value to any person, for or because
7 of the testimony under oath or affirmation given or to be
8 given by such person as a witness upon a trial, hearing, or
9 other proceeding, before any court, any committee of either
10 House or both Houses of Congress, or any agency, com-
11 mission, or officer authorized by the laws of the United
12 States to hear evidence or take testimony, or for or be-
13 cause of his absence therefrom; or

14 “(i) Whoever, directly or indirectly, asks, demands,
15 exacts, solicits, seeks, accepts, receives, or agrees to receive
16 anything of value for himself for or because of the testimony
17 under oath or affirmation given or to be given by him as a
18 witness upon any such trial, hearing, or other proceeding,
19 or for or because of his absence therefrom—

20 “Shall be fined not more than \$10,000 or imprisoned
21 for not more than two years, or both.

22 “(j) Subsections (d), (e), (h), and (i) shall not be
23 construed to prohibit the payment or receipt of witness fees
24 provided by law, or the payment, by the party upon whose
25 behalf a witness is called and receipt by a witness, of

1 the reasonable cost of travel and subsistence incurred and the
2 reasonable value of time lost in attendance at any such trial,
3 hearing, or proceeding, or, in the case of expert witnesses,
4 involving a technical or professional opinion, a reasonable
5 fee for time spent in the preparation of such opinion, and in
6 appearing and testifying.

7 “(k) The offenses and penalties prescribed in this sec-
8 tion are separate from and in addition to those prescribed in
9 sections 1503, 1504, and 1505 of this title.”

10 **“§ 202. Definitions**

11 “(a) For the purpose of sections 203, 205, 207, 208,
12 and 209 of this title the term ‘special Government employee’
13 shall mean an officer or employee of the executive branch
14 of the United States Government, of any independent agency
15 of the United States or of the District of Columbia, who is
16 retained, designated, appointed, or employed to perform, with
17 or without compensation, for not to exceed one hundred and
18 thirty days during any period of three hundred and sixty-
19 five consecutive days, temporary duties either on a full-time
20 or intermittent basis. Notwithstanding section 29 (c) and
21 (d) of the Act of August 10, 1956 (70A Stat. 632; 5
22 ~~U.S.C. 304 (e) and (d)~~ *U.S.C. 30r (c) and (d)*), a
23 Reserve officer of the Armed Forces, or an officer of
24 the National Guard of the United States, unless other-
25 wise an officer or employee of the United States, shall

1 be classified as a special Government employee while
 2 on active duty solely for training. A Reserve officer
 3 of the Armed Forces or an officer of the National Guard
 4 of the United States who is serving a period of extended
 5 active duty in excess of one hundred and thirty days shall
 6 be classified as an officer of the United States within the
 7 meaning of section 203 and sections 205 through 209 and
 8 218. The terms ‘officer or employee’ and ‘special Govern-
 9 ment employee’ as used in sections 203, 205, 207 through
 10 209, and 218, shall not include enlisted members of the
 11 Armed Forces.

12 “(b) For the purposes of sections 203, 205, and 207
 13 of this title, the term ‘official responsibility’ means the direct
 14 administrative or operating authority, whether intermediate
 15 or final, and either exercisable alone or with others, and
 16 either personally or through subordinates, to approve, dis-
 17 approve, or otherwise direct Government action.

18 **“§ 203. Compensation to Members of Congress, officers, and**
 19 **others in matters affecting the Government**

20 “(a) Whoever, otherwise than as provided by law for
 21 the proper discharge of official duties, directly or indirectly
 22 receives or agrees to receive, or asks, demands, solicits, or
 23 seeks, any compensation for any services rendered or to be
 24 rendered either by himself or another—

25 “(1) at a time when he is a ~~Member of Congress or~~

1 a Resident Commissioner, either before or after he has
2 qualified Member of Congress, Member of Congress
3 Elect, Resident Commissioner, or Resident Commissioner
4 Elect; or

5 “(2) at a time when he is an officer or employee of
6 the United States in the executive, legislative, or judicial
7 branch of the Government, or in any agency of the
8 United States, including the District of Columbia,
9 in relation to any proceeding, application, request for a
10 ruling or other determination, contract, claim, controversy,
11 charge, accusation, arrest, or other particular matter in
12 which the United States is a party or has a direct and
13 substantial interest, before any department, agency, court-
14 martial, officer, or any civil, military, or naval commission,
15 or

16 “(b) Whoever, knowingly, otherwise than as provided
17 by law for the proper discharge of official duties, directly
18 or indirectly gives, promises, or offers any compensation for
19 any such services rendered or to be rendered at a time when
20 the person to whom the compensation is given, promised, or
21 offered, is or was such a Member, Commissioner, officer, or
22 employee—

23 “Shall be fined not more than \$10,000 or imprisoned
24 for not more than two years, or both; and shall be incapable

1 of holding any office of honor, trust, or profit under the
2 United States.

3 “(c) A special Government employee shall be sub-
4 ject to subsection (a) only in relation to a particular matter
5 (1) in which he has at any time participated personally and
6 substantially as a Government employee or as a special Gov-
7 ernment employee through decision, approval, disapproval,
8 recommendation, the rendering of advice, investigation or
9 otherwise, or (2) which is or within two years has been a
10 subject of his official responsibility, or (3) which is pending
11 in the department or agency of the Government in which he
12 is serving: *Provided*, That clause (3) shall not apply in the
13 case of a special Government employee who serves no more
14 than fifteen days during any period of three hundred and
15 sixty-five consecutive days.

16 **“§ 204. Practice in Court of Claims by Members of**
17 **Congress**

18 “Whoever, being a ~~Member of Congress or a Resident~~
19 ~~Commissioner, either before or after he has qualified~~ *Member*
20 *of Congress, Member of Congress Elect, Resident Commis-*
21 *sioner, or Resident Commissioner Elect*, practices in the
22 Court of Claims, shall be fined not more than \$10,000 or
23 imprisoned for not more than two years, or both, and shall
24 be incapable of holding any office of honor, trust, or profit
25 under the United States.

1 “§ 205. Activities of officers and employees in claims
2 against and other matters affecting the Gov-
3 ernment

4 “Whoever, being an officer or employee of the United
5 States in the executive, legislative, or judicial branch of the
6 Government or in any agency of the United States, includ-
7 ing the District of Columbia, otherwise than in the proper
8 discharge of his official duties—

9 “(1) acts as agent or attorney for prosecuting any
10 claim against the United States, or receives any gratui-
11 ty, or any share of or interest in any such claim in
12 consideration of assistance in the prosecution of such
13 claim, or

14 “(2) acts as agent or attorney for anyone before
15 any department, agency, court, court-martial, officer, or
16 any civil, military, or naval commission in connection
17 with any proceeding, application, request for a ruling
18 or other determination, contract, claim, controversy,
19 charge, accusation, arrest, or other *particular* matter in
20 which the United States is a party or has a direct and
21 substantial interest—

22 “Shall be fined not more than \$10,000 or imprisoned for
23 not more than two years, or both.

24 “A special Government employee shall be subject to the
25 preceding paragraphs only in relation to a particular mat-

1 ter (1) in which he has at any time participated personally
2 and substantially as a Government employee or as a special
3 Government employee through decision, approval, disap-
4 proval, recommendation, the rendering of advice, investiga-
5 tion or otherwise, or (2) which is or within two years has
6 been a subject of his official responsibility, or (3) which is
7 pending in the department or agency of the Government
8 in which he is serving: *Provided*, That clause (3) shall
9 not apply in the case of a special Government employee who
10 serves no more than fifteen days during any period of three
11 hundred and sixty-five consecutive days.

12 “Nothing herein prevents an officer or employee from
13 taking uncompensated action, not inconsistent with the
14 faithful performance of his duties, to aid or assist any person
15 who is the subject of disciplinary, loyalty, or other person-
16 nel administration proceedings with respect to those pro-
17 ceedings.

18 “Nothing herein or in section 203 prevents an officer or
19 employee, including a special Government employee, from
20 acting, with or without compensation, as agent or attorney
21 for or otherwise aiding or assisting his parents, spouse, child,
22 or any person for whom he is serving as guardian, executor,
23 administrator, trustee, or other personal fiduciary except in
24 those matters in which he has participated personally and

1 substantially as a Government employee, through decision,
2 approval, disapproval, recommendation, the rendering of
3 advice, investigation, or otherwise, or which are the sub-
4 ject of his official responsibility, provided that the Govern-
5 ment official responsible for appointment to his position
6 approves.

7 “Nothing herein or in section 203 or 207 prevents
8 a present or former special Government employee from aid-
9 ing or assisting another person in the performance of work
10 under a contract with or for the benefit of the United States
11 provided that the head of such special Government em-
12 ployee’s department or agency shall certify in writing that
13 the national interest requires such aid or assistance.

14 “Such certification shall be published in the Federal
15 Register.

16 “Nothing herein prevents an officer or employee from
17 giving testimony under oath or from making statements
18 required to be made under penalty for perjury or contempt.

19 **“§ 206. Exemption of retired officers of the Armed Forces**

20 “Sections 203 and 205 of this title shall not apply to a
21 retired officer of the Armed Forces of the United States while
22 not on active duty and not otherwise an officer or employee
23 of the United States, or to any person specially excepted by
24 Act of Congress.

1 “§ 207. Disqualification of former officers and employees
2 in matters connected with former duties or offi-
3 cial responsibilities; disqualification of partners

4 “(a) Whoever, having been an officer or employee of
5 the executive branch of the United States Government, of
6 any independent agency of the United States, or of the
7 District of Columbia, including a special Government em-
8 ployee, after his employment has ceased, knowingly acts as
9 agent or attorney for, ~~or aids or assists~~ anyone *other than*
10 *the United States* in connection with any judicial or other
11 proceeding, application, request for a ruling or other deter-
12 mination, contract, claim, controversy, charge, accusation,
13 arrest, or other particular matter in which the United States
14 is a party or has a direct and substantial interest and in
15 which he participated personally and substantially as an
16 officer or employee, through decision, approval, disapproval,
17 recommendation, the rendering of advice, investigation, or
18 otherwise, while so employed, or

19 “(b) Whoever, having been so employed, within two
20 years after his last employment has ceased, appears per-
21 sonally before any court or department or agency of the
22 Government as agent, or attorney for, anyone other than
23 the United States in connection with any proceeding, appli-
24 cation, request for a ruling or other determination, contract,
25 claim, controversy, charge, accusation, arrest, or other par-

1 ticular matter in which the United States is a party or
2 directly and substantially interested, and which was under
3 his official responsibility as an officer or employee of the
4 Government at any time within a period of two years prior
5 to the termination of his employment—

6 “Shall be fined not more than \$10,000 or imprisoned
7 for not more than two years, or both.

8 “(c) Whoever, being a partner of a former officer or
9 employee of the executive branch of the United States Gov-
10 ernment, of any independent agency of the United States, or
11 of the District of Columbia, including a former special Gov-
12 ernment employee, engages, during a period of two years
13 following the termination of the latter’s employment by the
14 Government, in any activities which such former officer or
15 employee of the Government or special Government em-
16 ployee is himself prohibited from engaging in by subsection
17 (a) hereof; or

18 “(d) Whoever, being a partner of ~~such~~ an officer or
19 employee of the executive branch of the United States Gov-
20 ernment, of any independent agency of the United States,
21 or of the District of Columbia, including a special Govern-
22 ment employee, acts as agent or attorney for, ~~or aids or~~
23 ~~assists~~ anyone other than the United States, in connection
24 with any judicial or other proceeding, application, request
25 for a ruling or other determination, contract, claim, contro-

1 versy, charge, accusation, arrest, or other particular matter
2 in which the United States is a party or has a direct and
3 substantial interest and in which such officer or employee of
4 the Government or special Government employee partici-
5 pates or has participated personally and substantially as a
6 Government employee through decision, approval, disap-
7 proval, recommendation, the rendering of advice, investiga-
8 tion or otherwise, or which is the subject of his official
9 responsibility—

10 “Shall be fined not more than \$5,000, or imprisoned
11 not more than one year, or both.

12 “A partner of a present or former officer or employee of
13 the executive branch of the United States Government, of
14 any independent agency of the United States, or of the
15 District of Columbia or of a present or former special Gov-
16 ernment employee shall as such be subject to the provisions
17 of sections 203, 205, and 207 of this title only as expressly
18 provided in subsections (c) and (d) of this section.

19 **“§ 208. Acts affecting a personal financial interest**

20 “(a) Except as permitted by subsection (b) hereof,
21 whoever, being an officer or employee of the executive
22 branch of the United States Government, of any independent
23 agency of the United States, or of the District of Columbia,
24 including a special Government employee, participates per-
25 sonally and substantially as a Government officer or em-

1 ployee, through decision, approval, disapproval, recommen-
2 dation, the rendering of advice, investigation, or otherwise,
3 in a Government action, proceeding, or other particular
4 matter in which, to his knowledge, he, his spouse, child, part-
5 ner, business organization in which he is serving as officer,
6 director, trustee, partner or employee, or any person or or-
7 ganization with whom he is negotiating or has any arrange-
8 ment concerning prospective employment, has a financial
9 interest,

10 "Shall be fined not more than \$10,000, or imprisoned
11 not more than two years, or both.

12 "(b) Subsection (a) hereof shall not apply (1) if the
13 officer or employee first advises the Government official re-
14 sponsible for appointment to his position of the nature and
15 circumstances of the action, proceeding, or other particular
16 matter and makes full disclosure of the financial interest and
17 receives in advance a written determination made by such
18 official that the interest is not so substantial as to be deemed
19 likely to affect the integrity of the services which the Gov-
20 ernment may expect from such officer or employee, or (2)
21 if, by general rule or regulation published in the Federal
22 Register, the financial interest has been exempted from the
23 requirements of clause (1) hereof as being too remote or
24 too inconsequential to affect the integrity of Government
25 officers' or employees' services.

1 “§ 209. Salary of Government officials and employees pay-
2 able only by United States

3 “(a) Whoever receives any salary, or any contribu-
4 tion to or supplementation of salary, as compensation for
5 his services as an officer or employee of the executive branch
6 of the United States Government, of any independent
7 agency of the United States, or of the District of Columbia,
8 from any source other than the Government of the United
9 States, except as may be contributed out of the treasury of
10 any State, county, or municipality; or

11 “Whoever, whether an individual, partnership, associa-
12 tion, corporation, or other organization pays, or makes any
13 contribution to, or in any way supplements the salary of,
14 any such officer or employee under circumstances which
15 would make its receipt a violation of this subsection—

16 “Shall be fined not more than \$5,000 or imprisoned not
17 more than one year, or both.

18 “(b) Nothing herein prevents an officer or employee of
19 the executive branch of the United States Government, or of
20 any independent agency of the United States, or of the Dis-
21 trict of Columbia, from continuing to participate in a bona
22 fide pension, retirement, group life, health or accident insur-

1 ance, profit-sharing, stock bonus, or other employee welfare
2 or benefit plan maintained by a former employer.

3 “(c) This section does not apply to a special Govern-
4 ment employee or to an officer or employee of the Govern-
5 ment serving without compensation, whether or not he is a
6 special Government employee, or to any person paying,
7 contributing to, or supplementing his salary as such.”

8 “(d) This section does not prohibit payment or accept-
9 ance of contributions, awards, or other expenses under the
10 terms of the Government Employees Training Act (Public
11 Law 85-507, 72 Stat. 327; 5 U.S.C. 2301-2319, July 7,
12 1958).”

13 (b) Sections 214 and 215 of chapter 11 of title 18 of
14 the United States Code are respectively redesignated sections
15 210 and 211;

16 (c) Sections 216 and 223 of chapter 11 of title 18 of
17 the United States Code are repealed;

18 (d) Sections 217, 218, 219, 220, 221, and 222 of
19 chapter 11 of title 18 of the United States Code are respec-
20 tively redesignated sections 212, 213, 214, 215, 216, and
21 217;

1 (e) Chapter 11 of title 18 of the United States Code
2 is further amended by adding at the end thereof the following
3 new section:

4 **“§ 218. Voiding transactions in violation of chapter; re-**
5 **covery by the United States**

6 “In addition to any other remedies provided by law
7 the President or, under regulations prescribed by him, the
8 head of any department or agency involved, may declare
9 void and rescind any contract, loan, grant, subsidy, license,
10 right, permit, franchise, use, authority, privilege, benefit,
11 certificate, ruling, decision, opinion, or rate schedule awarded,
12 granted, paid, furnished, or published, or the performance
13 of any service or transfer or delivery of any thing to, by
14 or for any agency of the United States or officer or employee
15 of the United States or person acting on behalf thereof, in
16 relation to which there has been *a final conviction* for any
17 violation of this chapter, and the United States shall be
18 entitled to recover in addition to any penalty prescribed by
19 law or in a contract the amount expended or the thing
20 transferred or delivered on its behalf, or the reasonable
21 value thereof.”

22 SEC. 2. Sections 281 and 283 (except as they may
23 apply to retired officers of the armed forces of the United
24 States), 282 and 284 of chapter 15 of title 18, section 434
25 of chapter 23 of title 18, and section 1914 of chapter 93 of

1 title 18 of the United States Code are repealed and will, re-
2 spectively, be supplanted by sections 203, 205, 204, 207,
3 208, and 209 of title 18 of the United States Code as set
4 forth in section 1 of this Act. All exemptions from the pro-
5 visions of sections 281, 282, 283, 284, 434, or 1914 of title
6 18 of the United States Code heretofore created or author-
7 ized by statute which are in force on the effective date of
8 this Act shall, on and after that date, be deemed to be ex-
9 emptions from sections 203, 204, 205, 207, 208, or 209,
10 respectively, of title 18 of the United States Code except to
11 the extent that they affect officers or employees of the execu-
12 tive branch of the United States Government, of any inde-
13 pendent agency of the United States, or of the District of
14 Columbia, as to whom they are no longer applicable.

15 SEC. 3. Section 190 of the Revised Statutes (5 U.S.C.
16 99) is repealed.

17 SEC. 4. This Act shall take effect ninety days after the
18 date of its enactment.

87TH CONGRESS
1ST SESSION

H. R. 8140

[Report No. 748]

A BILL

To strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes.

By Mr. Celler

JULY 13, 1961

Referred to the Committee on the Judiciary

JULY 20, 1961

Reported with amendments, referred to the House
Calendar, and ordered to be printed

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF
BUDGET AND FINANCE
(For information only;
should not be quoted
or cited)

CONTENTS

Issued August 8, 1961
For actions of August 7, 1961
87th-1st, No. 134

Appropriations.....	5,16
Audit report.....	20
CCC appraisals.....	3
Civil defense.....	23
Common Market.....	14
Conservation.....	15,18
Disaster relief.....	40
Durum wheat.....	12
Ethics.....	9,34
Expenditures.....	26
Farm lands.....	32
Farm program.....	39
Foreign aid.....	10,19,28
Forestry.....	13,17,36
Grants-in-aid.....	35
Lands.....	6,32,38
Libraries.....	8
Livestock feed.....	40
Manpower resources.....	24
National flower.....	29
Natural resources.....	15,27

Peace Corps.....	31
Peanuts.....	2
Personnel.....	9,11
Pesticides.....	30
Postal rates.....	21
Property.....	20,25
Research.....	17,36
Soil conservation.....	33
Sugar.....	37
Supplies.....	20
Surplus grain.....	4
Tobacco.....	1
Transportation.....	22
Virgin Islands.....	7
Wetlands.....	33
Wheat.....	12
Wildlife.....	4
Youth Corps.....	15,18

HIGHLIGHTS: House passed bills to: Provide for lease and transfer of tobacco acreage allotments. Authorize use of CCC surplus grain for feeding wildlife. Authorize annual appropriations to reimburse CCC for net realized losses. House committee reported (Aug. 4) foreign aid authorization bill. House subcommittee voted to report bill to continue exemption of durum wheat in Tularelake area, Calif., from allotments and quotas. Both Houses agreed to conference report on independent offices appropriation bill. Sen. Bartlett urged additional funds for forest research. Rep. McIntire introduced and discussed forestry research program bill. President approved farm bill today, Aug. 8.

HOUSE

1. **TOBACCO.** Passed as reported H. R. 1022, to provide for lease and transfer of tobacco acreage allotments. This bill includes the following limitations: (1) Both farmers involved must be in the same county and the lease must be filed with, and approved by, the county committee. (2) If the normal yield for the farm to which the allotment is being transferred exceeds the normal yield of the farm from which the transfer is being made by more than 10 percent, the transferred allotment will be adjusted downward in the same ratio as the difference in yields. (3) Not more than 5 acres of allotment may be leased and transferred to any farm. (4) Only farms already having tobacco allotments for the same kind of tobacco are eligible to lease allotments. (5) The acreage is considered as having been produced on the farm from which the allotment is transferred for purposes of future allotments and referendum voting rights.
pp. 13719-20

2. PEANUTS. Passed as reported H. R. 1021, to extend for 2 years the definition of "peanuts" which is now in effect under the Agricultural Adjustment Act of 1938 so as to exclude from acreage allotments and marketing quotas any peanuts produced and marketed for consumption as boiled peanuts. p. 13706
3. CCC APPRAISALS. Passed without amendment S. 763, to authorize annual appropriations to reimburse CCC for net realized losses sustained during any fiscal year in lieu of annual appropriations to restore capital impairment based on annual Treasury appraisals, and to provide for the amount of net gain or loss realized by CCC to be determined from the Corporation's financial statement as of the end of each fiscal year instead of requiring the Secretary of the Treasury to make an annual independent appraisal of the Corporation's assets and liabilities for the purpose of determining the net worth of the Corporation. This bill will now be sent to the President. p. 13721
4. SURPLUS GRAIN; WILDLIFE. Passed without amendment S. 614, to authorize the use of Commodity Credit Corporation owned surplus grains by the States for emergency use in the feeding of resident game birds and other resident wildlife. This bill will now be sent to the President. p. 13710
5. APPROPRIATIONS. Conferees were appointed on H. R. 7851, the Defense Department appropriation bill. Senate conferees have already been appointed. p. 13694
6. PUBLIC LANDS. Passed as reported H. R. 2925, to amend the act of March 8, 1922, so as to permit the sales of certain isolated tracts of public lands in Alaska. p. 13711
7. VIRGIN ISLANDS. Passed without amendment H. R. 7666, pertaining to the salary of the government comptroller of the Virgin Islands. p. 13707
8. LIBRARIES. At the request of Rep. Pelly, passed over without prejudice H. R. 8141, to revise the laws relating to depository libraries. p. 13716
9. ETHICS. Passed as reported H. R. 8140, to strengthen the criminal laws relating to bribery, graft, and conflicts of interest. pp. 13737-45
10. FOREIGN AID. The Foreign Affairs Committee reported without amendment (on Aug. 4) H. R. 8400, the foreign aid authorization bill (H. Rept. 851). p. 13772
Rep. Brademas inserted a letter signed by 30 representatives supporting H. R. 8400, the foreign aid authorization bill. p. 13749
11. PERSONNEL. The Post Office and Civil Service Committee reported without amendment H. R. 7021, to revise legislation authorizing Government agencies to provide quarters, household furniture and equipment, utilities, subsistence, and laundry service to civilian officers and employees of the U. S. (H. Rept. 856), and H. R. 1010, to provide for at least a two-step increase when an employee is promoted from one grade to another (H. Rept. 859). p. 13772
12. WHEAT. The Subcommittee on Wheat of the Agriculture Committee voted to report to the full committee with amendments S. 1107, to provide for an extension of the existing provision for a minimum durum wheat acreage allotment in the Tulalake area of California. p. D673
- FORESTRY. The Interstate and Foreign Commerce Committee submitted a report, "World Newsprint Supply--Demand Outlook Through 1963" (H. Rept. 854). p. 13772

The Clerk read the title of the bill.
The Clerk read the Senate amendment, as follows:

Page 6, strike out lines 15, 16, and 17.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Colorado?

There was no objection.

The Senate amendment was concurred in.

A motion to reconsider was laid on the table.

TO EXCHANGE CERTAIN PROPERTY IN ROCKY MOUNTAIN NATIONAL PARK, COLO.

Mr. ASPINALL. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 2203) to authorize the Secretary of the Interior to exchange certain property in Rocky Mountain National Park, Colo., and for other purposes, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Page 5, line 2, strike out "of line" and insert "line of".

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Colorado?

There was no objection.

The Senate amendment was concurred in.

A motion to reconsider was laid on the table.

BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

Mr. CELLER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 8140) to strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes, as amended.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) so much of chapter 11 of title 18 of the United States Code as precedes section 214 is amended to read as follows:

"CHAPTER 11—BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

"Sec.

"201. Bribery of public officials and witnesses.

"202. Definitions.

"203. Compensation of Members of Congress, officers and others, in matters affecting the Government.

"204. Practice in Court of Claims by Members of Congress.

"205. Activities of officers and employees in claims against and other matters affecting the Government.

"206. Exemption of retired officers of the Armed Forces.

"207. Disqualification of former officers and employees in matters connected with former duties or official responsibilities; disqualification of partners.

"208. Acts affecting a personal financial interest.

"209. Salary of Government officials and employees payable only by United States.

"210. Offer to procure appointive public office.

"211. Acceptance or solicitation to obtain appointive public office.

"212. Offer of loan or gratuity to bank examiner.

"213. Acceptance of loan or gratuity by bank examiner.

"214. Offer for procurement of Federal Reserve bank loan and discount of commercial paper.

"215. Receipt of commissions or gifts for procuring loans.

"216. Receipt or charge of commissions or gifts for farm loan, land bank, or small business transactions.

"217. Acceptance of consideration for adjustment of farm indebtedness.

"218. Voiding transactions in violation of chapter; recovery by the United States.

"§ 201. Bribery of public officials and witnesses

"(a) For the purpose of this section:

"'public official' means Member of Congress, or Resident Commissioner, either before or after he has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror; and

"'person who has been selected to be a public official' means any person who has been nominated or appointed to be a public official, or has been officially informed that he will be so nominated or appointed; and

"'official act' means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in his official capacity, or in his place of trust or profit.

"(b) Whoever, directly or indirectly, corruptly gives, offers or promises anything of value to any public official or person who has been selected to be a public official, or offers or promises any public official or any person who has been selected to be a public official to give anything of value to any other person or entity, with intent—

"(1) to influence any official act; or

"(2) to influence such public official or person who has been selected to be a public official to commit or aid in committing, or collude in, or allow, any fraud, or make opportunity for the commission of any fraud, in the United States; or

"(3) to induce such public official or such person who has been selected to be a public official to do or omit to do any act in violation of his lawful duty, or

"(c) Whoever, being a public official or person selected to be a public official, directly or indirectly, corruptly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself or for any other person or entity, in return for:

"(1) being influenced in his performance of any official act; or

"(2) being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

"(3) being induced to do or omit to do any act in violation of his official duty; or

"(d) Whoever, directly or indirectly, corruptly gives, offers, or promises anything of value to any person, or offers or promises such person to give anything of value to any other person or entity, with intent to influence the testimony under oath or affirmation of such first-mentioned person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or with

intent to influence such person to absent himself therefrom; or

"(e) Whoever, directly or indirectly, corruptly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself or for any other person or entity in return for being influenced in his testimony under oath or affirmation as a witness upon any such trial, hearing, or other proceeding, or in return for absenting himself therefrom—

"Shall be fined not more than \$20,000 or three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than fifteen years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.

"(f) Whoever, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly gives, offers, or promises anything of value to any public official, former public official, or person selected to be a public official, for or because of any official act performed or to be performed by such public official, former public official, or person selected to be a public official; or

"(g) Whoever, being a public official, former public official, or person selected to be a public official, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself or for because of any official act performed or to be performed by him; or

"(h) Whoever, directly or indirectly, gives, offers, or promises anything of value to any person, for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or for or because of his absence therefrom; or

"(i) Whoever, directly or indirectly, asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself or for because of the testimony under oath or affirmation given or to be given by him as a witness upon any such trial, hearing, or other proceeding, or for or because of his absence therefrom—

"Shall be fined not more than \$10,000 or imprisoned for not more than two years, or both.

"(j) Subsections (d), (e), (h), and (i) shall not be construed to prohibit the payment or receipt of witness fees provided by law, or the payment, by the party upon whose behalf a witness is called and receipt by a witness, of the reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance at any such trial, hearing, or proceeding, or, in the case of expert witnesses, involving a technical or professional opinion, a reasonable fee for time spent in the preparation of such opinion, and in appearing and testifying.

"(k) The offenses and penalties prescribed in this section are separate from and in addition to those prescribed in sections 1503, 1504, and 1505 of this title."

"§ 202. Definitions

"(a) For the purpose of sections 203, 205, 207, 208, and 209 of this title the term 'special Government employee' shall mean an officer or employee of the executive branch of the U.S. Government, of any independent agency of the United States or of the District of Columbia, who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis.

Notwithstanding section 29 (c) and (d) of the act of August 10, 1956 (70A Stat. 632; 5 U.S.C. 30r (c) and (d)), a Reserve officer of the Armed Forces, or an officer of the National Guard of the United States, unless otherwise an officer or employee of the United States, shall be classified as a special Government employee while on active duty solely for training. A Reserve officer of the Armed Forces or an officer of the National Guard of the United States who is serving a period of extended active duty in excess of 130 days shall be classified as an officer of the United States within the meaning of section 203 and sections 205 through 209 and 218. The terms 'officer or employee' and 'special Government employee' as used in sections 203, 205, 207 through 209, and 218, shall not include enlisted members of the Armed Forces.

"(b) For the purposes of sections 203, 205, and 207 of this title, the term 'official responsibility' mean the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action.

"§ 203. Compensation to Members of Congress, officers, and others in matters affecting the Government

"(a) Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receives or agrees to receive, or asks, demands, solicits, or seeks, any compensation for any services rendered or to be rendered either by himself or another—

"(1) at a time when he is a Member of Congress, Member of Congress Elect, Resident Commissioner, or Resident Commissioner Elect; or

"(2) at a time when he is an officer or employee of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States, including the District of Columbia, in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, courtmartial, officer, or any civil, military, or naval commission, or

"(b) Whoever, knowingly, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly gives, promises, or offers any compensation for any such services rendered or to be rendered at a time when the person to whom the compensation is given, promised, or offered, is or was such a Member, Commissioner, officer, or employee—

"Shall be fined not more than \$10,000 or imprisoned for not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States.

"(c) A special Government employee shall be subject to subsection (a) only in relation to a particular matter (1) in which he has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or (2) which is or within two years has been a subject of his official responsibility, or (3) which is pending in the department or agency of the Government in which he is serving: *Provided*, That clause (3) shall not apply in the case of a special Government employee who serves no more than fifteen days during any period of three hundred and sixty-five consecutive days.

"§ 204. Practice in Court of Claims by Members of Congress

"Whoever, being a Member of Congress, Member of Congress Elect, Resident Commissioner, or Resident Commissioner Elect, practices in the Court of Claims, shall be fined not more than \$10,000 or imprisoned for not more than two years, or both, and shall be incapable of holding any office of honor, trust, or profit under the United States.

"§ 205. Activities of officers and employees in claims against and other matters affecting the Government

"Whoever, being an officer or employee of the United States in the executive, legislative, or judicial branch of the Government or in any agency of the United States, including the District of Columbia, otherwise than in the proper discharge of his official duties—

"(1) acts as agent or attorney for prosecuting any claim against the United States, or receives any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim, or

"(2) acts as agent or attorney for anyone before any department, agency, court, courtmartial, officer, or any civil, military, or naval commission in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest—

"Shall be fined not more than \$10,000 or imprisoned for not more than two years, or both.

"A special Government employee shall be subject to the preceding paragraphs only in relation to a particular matter (1) in which he has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or (2) which is or within two years has been a subject of his official responsibility, or (3) which is pending in the department or agency of the Government in which he is serving: *Provided*, That clause (3) shall not apply in the case of a special Government employee who serves no more than fifteen days during any period of three hundred and sixty-five consecutive days.

"Nothing herein prevents an officer or employee from taking uncompensated action, not inconsistent with the faithful performance of his duties, to aid or assist any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings with respect to those proceedings.

"Nothing herein or in section 203 prevents an officer or employee, including a special Government employee, from acting, with or without compensation, as agent or attorney for or otherwise aiding or assisting his parents, spouse, child, or any person for whom he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except in those matters in which he has participated personally and substantially as a Government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which are the subject of his official responsibility, provided that the Government official responsible for appointment to his position approves.

"Nothing herein or in section 203 or 207 prevents a present or former special Government employee from aiding or assisting another person in the performance of work un-

der a contract with or for the benefit of the United States provided that the head of such special Government employee's department or agency shall certify in writing that the national interest requires such aid or assistance.

"Such certification shall be published in the Federal Register.

"Nothing herein prevents an officer or employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

"§ 206. Exemption of retired officers of the Armed Forces

"Sections 203 and 205 of this title shall not apply to a retired officer of the Armed Forces of the United States while not on active duty and not otherwise an officer or employee of the United States, or to any person specially excepted by Act of Congress.

"§ 207. Disqualification of former officers and employees in matters connected with former duties or official responsibilities; disqualification of partners

"(a) Whoever, having been an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, after his employment has ceased, knowingly acts as agent or attorney for anyone other than the United States in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest and in which he participated personally and substantially as an officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, while so employed, or

"(b) Whoever, having been so employed, within two years after his last employment has ceased, appears personally before any court or department or agency of the Government as agent, or attorney for, anyone other than the United States in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or directly and substantially interested, and which was under his official responsibility as an officer or employee of the Government at any time within a period of two years prior to the termination of his employment—

"Shall be fined not more than \$10,000 or imprisoned for not more than two years, or both.

"(c) Whoever, being a partner of a former officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a former special Government employee, engages, during a period of two years following the termination of the latter's employment by the Government, in any activities which such former officer or employee of the Government or special Government employee is himself prohibited from engaging in by subsection (a) hereof; or

"(d) Whoever, being a partner of an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, acts as agent or attorney for anyone other than the United States, in connection with any judicial or other proceeding, application, request for a

ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest and in which such officer or employee of the Government or special Government employee participates or has participated personally and substantially as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or which is the subject of his official responsibility—

"Shall be fined not more than \$5,000, or imprisoned not more than one year, or both.

"A partner of a present or former officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia or of a present or former special Government employee shall as such be subject to the provisions of sections 203, 205, and 207 of this title only as expressly provided in subsections (c) and (d) of this section.

"§ 208. Acts affecting a personal financial interest

"(a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in a Government action, proceeding, or other particular matter in which, to his knowledge, he, his spouse, child, partner, business organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest,

"Shall be fined not more than \$10,000, or imprisoned not more than two years, or both.

"(b) Subsection (a) hereof shall not apply (1) if the officer or employee first advises the Government official responsible for appointment to his position of the nature and circumstances of the action, proceeding, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee, or (2) if, by general rule or regulation published in the Federal Register, the financial interest has been exempted from the requirements of clause (1) hereof as being too remote or too inconsequential to affect the integrity of Government officers' or employees' services.

"§ 209. Salary of Government officials and employees payable only by United States

"(a) Whoever receives any salary, or any contribution to or supplementation of salary, as compensation for his services as an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality; or

"Whoever, whether an individual, partnership, association, corporation, or other organization pays, or makes any contribution to, or in any way supplements the salary of, any such officer or employee under circumstances which would make its receipt a violation of this subsection—

"Shall be fined not more than \$5,000 or imprisoned not more than one year, or both.

"(b) Nothing herein prevents an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States, or of the District of Columbia, from continuing to participate in a bona fide pension, retirement, group life, health or accident insurance, profit-sharing, stock bonus, or other employee welfare or benefit plan maintained by a former employer.

"(c) This section does not apply to a special Government employee or to an officer or employee of the Government serving without compensation, whether or not he is a special Government employee, or to any person paying, contributing to, or supplementing his salary as such."

"(d) This section does not prohibit payment or acceptance of contributions, awards, or other expenses under the terms of the Government Employees Training Act (Public Law 85-501, 72 Stat. 327; 5 U.S.C. 2301-2319, July 7, 1958)."

(b) Sections 214 and 215 of chapter 11 of title 18 of the United States Code are respectively redesignated sections 210 and 211;

(c) Sections 216 and 223 of chapter 11 of title 18 of the United States Code are repealed;

(d) Sections 217, 218, 219, 220, 221, and 222 of chapter 11 of title 18 of the United States Code are respectively redesignated sections 212, 213, 214, 215, 216, and 217;

(e) Chapter 11 of title 18 of the United States Code is further amended by adding at the end thereof the following new section:

"§ 218. Voiding transactions in violation of chapter; recovery by the United States

"In addition to any other remedies provided by law the President or, under regulations prescribed by him, the head of any department or agency involved, may declare void and rescind any contract, loan, grant, subsidy, license, right, permit, franchise, use, authority, privilege, benefit, certificate, ruling, decision, opinion, or rate schedule awarded, granted, paid, furnished, or published, or the performance of any service or transfer or delivery of any thing to, by or for any agency of the United States or officer or employee of the United States or person acting on behalf thereof, in relation to which there has been a final conviction for any violation of this chapter, and the United States shall be entitled to recover in addition to any penalty prescribed by law or in a contract the amount expended or the thing transferred or delivered on its behalf, or the reasonable value thereof."

SEC. 2. Sections 281 and 283 (except as they may apply to retired officers of the Armed Forces of the United States), 282 and 284 of chapter 15 of title 18, section 434 of chapter 23 of title 18, and section 1914 of chapter 93 of title 18 of the United States Code are repealed and will, respectively, be supplanted by sections 203, 204, 205, 207, 208, and 209 of title 18 of the United States Code as set forth in section 1 of this Act. All exemptions from the provisions of sections 281, 282, 283, 284, 434, or 1914 of title 18 of the United States Code heretofore created or authorized by statute which are in force on the effective date of this Act shall, on and after that date, be deemed to be exemptions from sections 203, 204, 205, 207, 208, or 209, respectively, of title 18 of the United States Code except to the extent that they affect officers or employees of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, as to whom they are no longer applicable.

SEC. 3. Section 190 of the Revised Statutes (5 U.S.C. 99) is repealed.

SEC. 4. This Act shall take effect ninety days after the date of its enactment.

The SPEAKER pro tempore. Is a second demanded?

Mr. GROSS. Mr. Speaker, I demand a second, if no one else will, to be sure there will be debate on this matter.

Mr. McCULLOCH. Mr. Speaker, I demand a second, in order that we may have full discussion on the bill.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from New York is recognized for 20 minutes and the gentleman from Ohio [Mr. McCULLOCH] is recognized for 20 minutes.

Mr. CELLER. Mr. Speaker, the purpose of this bill H.R. 8140 is first, to strengthen, revise, and simplify existing Federal conflict-of-interest laws; second, to make appropriate general provision for consultants and temporary employees in the executive branch, the independent agencies and the District of Columbia; and third, to incorporate these conflict-of-interest laws with recodified prohibitions of bribery and graft, so that improper and unethical practices will be prevented without depriving the Government of the services of competent men and women.

Present law in this area presents a crazy quilt of contradictory provisions. As a 1958 staff report of Subcommittee No. 5 of the Committee on the Judiciary observed:

Existing conflict-of-interest law comprises overlapping, inconsistent and incomplete provisions.

Similarly, in 1960, the chairman of a special committee on Federal conflict-of-interest laws of the Association of the Bar of the City of New York which conducted an extensive study of these laws has testified that:

The statutory law—most of it a century old—is not broad enough to protect the Government against the manifold modern forms of conflict of interest.

The President, in a special message to Congress on conflicts of interest transmitted last April, stated:

The fundamental defect of these (conflict of interest) statutes as presently written is that: On the one hand, they permit an astonishing range of private interests and activities by public officials which are wholly incompatible with the duties of public office; on the other hand, they create wholly unnecessary obstacles to recruiting qualified people for Government service.

This latter deficiency is particularly serious in the case of consultants and other temporary employees and has been repeatedly recognized by the Congress in its enactment of special exemption statutes.

The previous administration also took a profoundly constructive interest in the problems of conflict of interest in Federal employment, and in June 1960, an Assistant Attorney General testified in detail and at length before Subcommittee No. 5 of the Committee on the Judiciary calling for a thorough revision and strengthening of existing law.

The bill before us, which might well be called the Celler-McCulloch-Lindsay bill is the product of more than 3 years of work by Subcommittee No. 5 of the Committee on the Judiciary com-

binning features of H.R. 3411 and H.R. 3412, identical measures introduced by Representatives McCULLOCH and myself; H.R. 3050, the result of a 2-year study by a special committee of the Association of the Bar of the City of New York, introduced by Representative LINDSAY; and the administration proposal, H.R. 7139, introduced by Representative HOLTZMAN.

H.R. 8140, the bill before us continues with strengthening changes the prohibitions of present conflict of laws and makes special provisions applicable to consultants and temporary employees; consolidates and revises the laws prohibiting bribery, and incorporates the revised bribery and conflict of interest provisions in a single chapter of the criminal code.

I commend the members of Subcommittee No. 5 of the Committee on the Judiciary—Representative RODINO, ROGERS of Colorado, HOLTZMAN, DONOHUE, TOLL, McCULLOCH, MILLER of New York and MEADER for their painstaking work, in studying and fashioning the bill.

I commend also the members of the staff, Messrs. Maletz, Fuchs, and Crabtree for their fine work in connection with this bill.

Section 281 of present law prohibits officers and employees of the Government, together with the Members of Congress, from receiving compensation for services rendered before Federal agencies in matters in which the United States is interested. The section is amended to prohibit payment as well as receipt of the forbidden compensation. Both payor and payee are now to be covered.

Section 282 of the present law prohibits Members of Congress from practicing in the Court of Claims. This section is continued without change.

No other conflict-of-interest provision affects Members of Congress. The discipline of Members must come from the electorate. A Congressman offending against good morals must face the voters who can condemn by refusing to reelect him.

The bill continues the prohibition of section 283 of the present law against Government employees acting as agent or attorney in the prosecution of claims against the Government.

The courts, however, have held that the term "claim against the United States" is limited to a demand against the United States for money or property, and the effect of this limitation renders present section 283 inadequate. Accordingly, the bill additionally prohibits an officer or employee of the Government from acting as agent or attorney for anyone before a Federal agency or a court in connection with any matter in which the United States has a direct and substantial interest.

Amplifying that, I want to indicate that where some of the conflict-of-interest statutes are restricted to "claims against the United States"—18 U.S.C. 283, 284; 5 U.S.C. 99—the courts have held that they do not protect the Government against the use of official position, influence, or inside information to aid private parties in Government pro-

ceedings which involve no claim for money or property. Yet the danger of abuses of Government position exist to an equal if not greater degree in proceedings such as applications for television and radio licenses, airline routes, electrical power sites, and the like. Literally read, existing law thus makes it a crime punishable by fine and imprisonment for a postal clerk to assist his mother in filing a routine claim for a tax refund, but does not prohibit a Cabinet officer from seeking to influence an independent agency to award a license for a valuable television station to a business venture in which he shared the profits.

There are many other technical inadequacies and statutory gaps. Section 434 of title 18, born of the Civil War procurement scandals, prohibits a Government official interested in the pecuniary profits of a business entity from acting as an officer or agent of the United States for the transaction of business with that business entity. By limiting its scope to "business entities" the statute does not cover the many other organizations which deal with the Government. In addition, the concept of "transacting business," if narrowly construed—as would be likely in a criminal prosecution—would exclude many dealings with the Government, such as the clearance or rejection of license applications in the executive branch or before an independent agency.

H.R. 8140 makes important changes in present postemployment prohibitions. Section 207(a) of the bill prohibits a former Government employee of the executive branch, an independent agency, or the District of Columbia from at any time acting as agent or attorney for anyone in connection with any particular matter before the Government, in which the United States has a direct and substantial interest and in which he participated personally and substantially as a Government employee. This is a lifetime bar, preventing the employee from switching sides to the detriment of his Government employer.

In addition, section 207(b) of the bill prohibits such a former Government employee, within 2 years after his last employment has ceased, from appearing personally before any court or Federal agency for a private party in connection with any particular matter in which the United States has a direct and substantial interest and which, within 2 years preceding the termination of his employment, was under his official responsibility.

A Government officer has official responsibility in a matter if he has certain decisionmaking authority with respect thereto. For example, the head of an executive department is responsible for all matters in the department. On the other hand, a general counsel of an agency, such as the Treasury Department, has official responsibility only for those matters which fall within his operating responsibility and with regard to which he has authority to make decisions for the Department.

The obligations of partners of Government employees under the conflict-of-interest statutes are also specified. For

2 years after a Government employee leaves the Government, his firm must stay out of matters in which he has participated personally and substantially for the Government. And while the Government partner remains in the Government, his firm must stay out of matters in which he participates or has participated or which are under his official responsibility.

Present section 434 prohibits officers or employees of the United States from transacting business on behalf of the United States with any business entity in which they are interested. Under section 208 of the bill, the prohibition will not apply if the officer or employee makes full disclosure of his interest in the matter to the official responsible for appointments to his position and receives a written determination that the interest is too insubstantial to affect the integrity of the service, or if, by general rule or regulation published in the Federal Register, the financial interest has been exempted from the prohibition as too remote or inconsequential.

Section 1914 of present law prohibits Government officers and employees from receiving from private sources any salary "in connection with" their Government service, and also prohibits private parties from contributing to or supplementing Government salaries. Section 209 of the bill continues these prohibitions with minor changes.

No present conflict-of-interest statute of general application makes separate provision for consultants or other temporary employees of the Government. Such employees have had to serve under the full rigor of existing general prohibitions, or have ignored these prohibitions, or have been made the subject of numerous nonuniform exemptions.

To correct this situation the bill creates a class of "special Government employee" to whom special conflict-of-interest rules are made applicable, namely, an officer or employee of the executive branch of the Government or of any independent agency or of the District of Columbia who is employed for not more than 130 days in any 365-day period to perform temporary duties.

Under the bill, a "special Government employee" is prohibited from rendering services or accepting compensation for services in relation to particular matters in which the United States has a direct and substantial interest and from prosecuting claims against the United States, in relation to particular matters—first, in which he has at any time participated personally and substantially as a Government employee; or second, which are or within 2 years have been a subject of his official responsibility; or third, if he serves more than 15 days in any 365-day period, which are pending in the department or agency in which he is serving.

A special Government employee would also be subject to the postemployment prohibitions and the prohibitions against participating for the Government in matters in which he has a financial interest, but is exempt from the prohibition against supplementation of Government salary by private sources.

The bill makes no change whatever in existing law affecting retired officers of the Armed Forces.

The bill combines in a single section and renders uniform the disparate provisions of the nine general bribery sections affecting Government employees; Members of Congress; judges and judicial officers, including jurors; and witnesses. This consolidation renders uniform the law describing a bribe and prescribing the intent or purpose which makes its transfer unlawful, and makes penalties more uniform.

The bill also empowers the President to void contracts in relation to which there has been a violation of the statutes prohibiting bribery, graft, and conflicts of interest.

The act would take effect 90 days after its enactment.

Mr. Speaker, this bill has the support and approval of the present administration and its objective has had the support of the previous administration. It has the support of the Association of the Bar of the City of New York's special conflict-of-interest committee whose 2-year study represents a notable contribution. I know of no opposition to the bill.

Mr. McCULLOCH. Mr. Speaker, I rise to support H.R. 8140, a bill to strengthen the criminal laws relating to bribery, graft and conflict of interest. In my opinion a general revision of the statutory law on this subject is long overdue.

Earlier this year I joined with the chairman of the Judiciary Committee, the gentleman from New York [Mr. CELLER], in introducing identical bills, H.R. 3411 and H.R. 3412, in order to carry forward into this Congress the unfinished work of the Judiciary Committee on this important subject. My colleague on the committee, the gentleman from New York [Mr. LINDSAY], again introduced the proposal of the New York Bar Association, H.R. 3050, much of which he was instrumental in formulating. The gentleman from New York [Mr. HOLTZMAN], another colleague on the committee, introduced the administration measure, H.R. 7139.

The bill which we are now considering is a composite and contains the best provisions from each of these bills. It is also the product of extensive hearings, in which the views of both the prior administration and the present administration were sought. I might add these views have been of considerable assistance in the final selection of the provisions incorporated into the bill.

The first part of the bill rewrites and brings together into one section of the Criminal Code the several disparate laws on bribery of public officials and witnesses. Here the object of the committee was to bring uniformity into the law, both with respect to the criminal conduct which constitutes bribery and the penalty for the offense. This will be a great improvement over the present code provisions which comprise nine general bribery sections and four sections prohibiting bribery in special cases.

The next section of the bill which warrants discussion prohibits Members of Congress and officers and employees of

the Government from receiving compensation for official services rendered in proceedings in which the United States is a party or has a direct and substantial interest. This section strengthens present law in that it prohibits payment as well as receipt of compensation for these services. It applies to "special" or temporary Government employees with respect to those matters in which they have participated personally and substantially or which within 2 years has been the subject of their official responsibility.

The next section prohibits Members of Congress from practicing in the Court of Claims. This is simply a reenactment of present law.

The remainder of the bill, with the exception of a provision which relates to retired military officers, and another provision which permits cancellation of contracts, relates: First, to prohibitions against officers and employees of the Government prosecuting claims against the United States or acting as agent or attorney in matters in which the United States has a direct and substantial interest; second, to the disqualification of former officers and employees of the Government to participate in proceedings in which they had personally participated while they were with the Government; third, to prohibitions against participating in matters in which the Government officer or employee has a financial interest; and fourth, to a prohibition against the payment of supplementary salaries to Government officers or employees by outside sources. None of these provisions apply to Members of Congress.

Also with each of these provisions special exemptions from the blanket coverage of the law are recognized for the temporary or part-time Government employee. Here the problem has been to isolate these employees from conflicts on the particular matters in the particular agencies in which they devote their part-time services.

Likewise special provisions are made for the business or professional partners of the former as well as part-time Government employees in order to isolate them from transactions in which conflicts are likely to occur. The uncertainties of the present law have made it imperative to clarify the status of the part-time Government employee in order to permit these individuals to participate in the vital areas of Government where their services as experts or consultants are needed. In very fine and understandable detail this objective has been accomplished by the present bill.

I know of no objection to the approach of the bill to the very serious problem of clarifying and strengthening the criminal law relating to bribery and conflict of interest. The objectives of the bill have been approved by both the present and the prior administrations. I hope that my colleagues on both sides of the aisle will join the sponsors in voting to suspend the rules and pass the bill.

(Mr. McCULLOCH asked and was given permission to revise and extend his remarks.)

Mr. McCULLOCH. Mr. Speaker, I now yield 7 minutes to the gentleman from New York [Mr. LINDSAY].

Mr. LINDSAY. Mr. Speaker, for my own part this bill now before us—the Celler-McCulloch-Lindsay bill—marks almost the end of the road of over 3 years of intensive work on the subject of conflicts of interest. In 1958, before coming to Congress, I was privileged to be a member of a special committee of the Association of the Bar of the City of New York, funded by the Ford Foundation, to study conflicts of interest in the executive branch of the Federal Government.

Members of the committee were the following:

Roswell B. Perkins, chairman, former Assistant Secretary of Health, Education, and Welfare.

Howard F. Burns, distinguished Cleveland lawyer and member of the Council of the American Law Institute.

Charles A. Collidge, eminent Massachusetts lawyer, former Assistant Secretary of Defense for Legal and Legislative Affairs, and former Special Assistant to the Secretary of Defense to recommend on the Hoover Commission Reports and on reorganization.

Paul M. Herzog, former Chairman of the National Labor Relations Board, and former Associate Dean of the Graduate School of Public Administration, Harvard University.

Alexander C. Hoagland, Jr., distinguished New York lawyer and former Fellow, the Association of the Bar of the City of New York.

Everett L. Hollis, corporation counsel, General Electric Co., and former General Counsel of the Atomic Energy Commission.

Charles A. Horsky, eminent Washington lawyer, partner in Covington & Burling.

John E. Lockwood, leading New York attorney, former General Counsel, Office of Inter-American Affairs, Department of State.

Samuel I. Rosenman, eminent lawyer and former special counsel to Presidents Roosevelt and Truman, and myself.

The staff director was Prof. Bayless Manning, of Yale Law School, and the associate staff director was Prof. Marver H. Bernstein, of Princeton University. Professor Manning subsequently became one of the three Presidential advisers of this administration on the subject of conflicts of interest.

In 1960, this committee published a book entitled "Conflict of Interest and Federal Service," which is regarded as the leading study on the subject of conflicts of interest in the executive branch. The committee drafted a bill which I introduced in the 86th Congress.

As reviewed in the committee report, the bill before us today is a composite of the efforts of the House Judiciary Committee, spreading over a period of years, of the Special Committee of the Association of the Bar of the City of New York, and the administration's own review of the subject. The bill before us is built largely around the recommendations of the bar association committee.

It is seldom that a legislator has the satisfaction of seeing something through from beginning to end when the end result emerges in near-perfect form. Our usual experience is to see a good beginning emasculated along the way, or so encumbered by amendments as to be unrecognizable. This was not the case here. For this, the distinguished chairman of the Judiciary Committee, the gentleman from New York [Mr. Celler] and the ranking Minority member, the gentleman from Ohio [Mr. McCulloch], deserve the thanks of the Congress. Another reason that this was made possible was because of the unusually able and competent assistance given to the Committee on the Judiciary by committee counsel, Herbert Mallett; assistant counsel, Herbert Fuchs, and Julian Singman; and minority counsel, William Crabtree. I should like to pay special tribute also to Assistant Attorney General Nicholas Katzenbach for his lawyerlike approach to the subject and his sensible suggestions.

This is one of the most difficult subjects to legislate that one can possibly imagine. In fact, the argument is made more often than not that it is impossible to legislate morality—be it public or private. Nonsense. We legislate on the subject of morality every day of the week—and sometimes it is good legislation and sometimes bad. The fact is that it is done, and I suppose that the Committee on the Judiciary has more to do on the subject than any other committee.

We approach this subject with two themes in mind. The first is that ethical standards in the U.S. Federal Government must be beyond reproach. The second is that the Federal Government must be in a position to obtain the personnel and information it needs to meet the demands of the 20th century. These themes are coequal. Neither may be safely subordinated to the other.

A conflict of interest does not necessarily presuppose that action by the official favoring one of these interests will be prejudicial to the other, nor that the official will in fact resolve the conflict to his own personal advantage rather than the Government's. If a man is in a position of conflicting interests, he is subject to temptation however he resolves the issue. Regulation of conflicts of interest seeks to prevent situations of temptation from arising. An Internal Revenue agent auditing his own tax return would offer a simple illustration of such a conflict of interest. Perhaps the agent's personal interest in the matter would not affect his discharge of his official duty; but the experience of centuries indicates that the contrary is more likely, and that affairs should be so arranged as to prevent a man from being put in such an equivocal position.

The danger of such conflicts of interest was noted long ago; even before the Sermon on the Mount warned against serving two masters, Plato had forbidden his philosopher kings to hold any personal economic interests whatever. In America the problem was recognized early. When the United States was new, its first Congress for-

bade the holder of the office of Secretary of the Treasury to invest in Government securities; and the bulk of our present conflict of interest statutes dates from the 19th century. But since the end of World War II the attention of the American public has been drawn to conflict of interest problems with a new frequency and intensity.

I should like to talk about that aspect of the bill not concerned with the subject of bribery. I am more concerned for the moment about those sections which deal with the classical subject of conflicts of interest. The committee has sought in this connection to modernize and to make understandable seven ancient statutes which since the middle of the 19th century have formed the core of legislation and general application dealing with the conflict of interest problem among executive branch employees.

In general, what do these seven statutes do? Three of them restrict Government employees or former employees from assisting others in the prosecution of claims against the United States. A fourth is sighted essentially on the same target but is focused a little differently: it forbids Government employees to assist others for pay before a forum of the executive branch in any matter in which the United States is interested. The fifth statute prohibits a Government official from acting for the Government in transactions with a business entity in which he has an economic interest. The sixth forbids the official to receive pay from non-Government sources in connection with his official services. And the seventh forbids the official to receive pay for assisting another in obtaining a Government contract.

More tersely, five of the seven provisions forbid officials to assist outsiders in their dealings with the Government; one requires officials to disqualify themselves from acting in Government matters in which they have a conflicting personal economic interest; and one prohibits outside pay for Government work.

Some incidental facts about these statutes are of preliminary interest. Five of the seven were enacted between 1853 and 1872. Three were responses to the venalities of the Civil War. All but one are criminal statutes, in the style of the 19th century, with differing penalties ranging from \$1,000 to \$10,000 and from 6 months' to 2 years' imprisonment. It is the executive branch that feels the main sting of the provisions, with Members of Congress expressly covered by only two of them, and the judiciary by none. Five apply to employees when in Government service; the other two—both of them prosecution of claims statutes—restrict the activities of former Government employees for a period of 2 years. No two of the provisions use the same drafting language in defining the scope of their application or the offense proscribed, though three of them refer expressly to prosecution of Government claims.

For the lawyer called upon to give an opinion interpreting these statutes, they are a nightmare; they spew up one unanswerable question after another. Who is an officer or employee under section

281, for example? The term has been interpreted to include not only full-time regular personnel but part-time and intermittent personnel, whether or not paid by the Government. It is usually a surprise to an intermittent adviser to learn that he is legally an employee of the Government—and not just on the days on which he is actually doing Government work.

To take another recurrent problem under sections 281, 283, 284, and 99, what does it mean to assist in prosecuting a claim? May one appear as a witness to testify in favor of a claim against the Government? If not, what can one do if subpoenaed by the claimant. Does one act as counsel if he writes a memorandum on a point of law? Again, the answers may vary from statute to statute.

Perhaps the most baffling problems of interpretation arise from the connecting phrases in the statutes—key phrases purporting to define the limits of these criminal offenses. Section 281 forbids the employee to assist the outsider in an executive forum in any "matter in which the United States is directly or indirectly interested." In what matter coming before the executive branch is the United States not directly or indirectly interested? Section 284 forbids the former employee for 2 years to assist in prosecuting claims involving any subject matter directly connected with which he was employed by the Government. If a claimant is suing on a defense procurement contract, should the phrase be interpreted to bar a former Government employee only if he worked on that contract? If he worked on other contracts for the same kind of commodities? If he worked on other contracts for another armed service in the Department of Defense? and so forth. How direct a participant must he have been to be barred?

These statutes are shot full of exceptions. In a helter-skelter way Congress has frequently recognized that the rigidity of the general statutes on conflict of interest makes them unworkable as applied to intermittent employees and particular Government positions. The United States Code is peppered with spot exceptions and exemptions, total or partial, enacted piecemeal to meet special cases. Inevitably, this process has produced an arbitrary pattern of controls and exemptions, working unequally, for no apparent reason, from position to position, and from office to office. This bill would make all of these special exceptions unnecessary.

Finally, Mr. Speaker, there is a great problem of varying interpretation regarding outside compensation restrictions, largely embodied in present-day section 1914 of title 18. For example, to what extent are preexisting stock options, pension plans, and insurance plans outlawed compensation under the statute? When are the rights under these plans vested and when not? In an effort to comply with section 1914 and simultaneously to maintain the appointee's eligibility under these security plans, subtly differing degrees of quasi resignation or leave of absence are de-

vised. For services carefully designated as past, substantial severance payments may be made, with the payments themselves sometimes spread forward in installments over the period of the appointee's Government service. Formal written resignations are executed for the record when the clear expectation of all concerned is that the appointee will in fact return after his stay in Washington.

No one can say with any confidence which of these arrangements, or whether any or all of these arrangements, are legal and permissible under the existing statutes. In the overwhelming majority of instances it appears that, where the statutes are recognized and considered at all, Government appointees and their lawyers lean over backward in an effort to comply, but the crude style of the ancient conflict-of-interest statutes is an inducement to artifice, and there will always be a minority ready to pursue every advantage. When compliance with the law becomes mainly a matter of form, the law is made to appear ludicrous, legal administration is undermined, the underlying policy of the law may be subverted, and the most conscientious bear the heaviest burden. And it is usually a sign that the law is out of touch with reality.

Mr. Speaker, this bill before us today consolidates the scattered conflict-of-interest laws into one unified act, with a common set of definitions and consistent approach; broadens the scope of the conflict-of-interest laws to cover the full range of modern governmental activities; differentiates in some respects between regular and intermittent employees and accommodates itself to the modern use of intermittent personnel; generally strengthens the restraints against conflicts of interest, and elevates to statutory level some important restraints now in regulations or not covered, particularly relating to gifts and use of office to obtain something of value from persons doing business with the Government; recognizes the legitimate private economic interests of Government employees, and permits employees to retain certain security-oriented economic interests, particularly continued benefits in outside pension plans.

More specifically, the program tightens up an existing conflict-of-interest laws in the following general ways:

First. Persons occupying a position inside government must not be allowed to tamper with the wheels of government to the special advantage of themselves or any entity on the outside in which they have a personal economic interest.

Second. Persons occupying a position inside government must not be allowed to help an individual or entity on the outside, where the latter is seeking to make the wheels of government move in a particular way.

Third. Persons occupying a position inside government must not be allowed to use their office as a source of power or of confidential information for purposes of advancing their personal economic interests.

One of the significant contributions that this bill makes to this field is the clarification that it lends to a hereto-

fore muddy field. It is important that men who lend their services to the Government have a clear idea as to where they stand insofar as outside interests are concerned and the position that they will be in after leaving Government service. For example, the heretofore murky and dangerous waters surrounding the problem of partners of Government employees and former Government employees is clarified. I refer specifically now to the committee report on pages 11 and 12 which discusses the question of post-employment and partners. The status and obligations of partners of Government employees under the conflict-of-interest statutes is not specified in present law. Under the Canons of Ethics of the American Bar Association (canons 6, 36, and 37), and at common law—see *United States v. Standard Oil Co.*, 136 F. Supp. 345 (D.C.N.Y., 1955)—the activities of partners are to some extent imputed to each other and to some extent disqualify non-Government partners from activities with which Government partners have become identified. The unsettled state of the law has given rise to serious confusion as to the precise limits of the doctrine of imputation. For this reason, the bill—section 207(c) and (d)—prescribes the disqualification of partners of Government employees and former Government employees in the executive branch, the independent agencies, and the District of Columbia, and the limits on such disqualification.

Section 207(c) provides that for 2 years after the termination of a Government employee's service his partners must refrain from any activities from which the ex-Government partner is prohibited from engaging by section 207(a). This means that if a Government employee or special Government employee has participated directly and substantially in a matter in which the United States is directly and substantially interested not only is he personally prohibited from representing private parties in that particular matter, but his firm is barred with respect thereto for 2 years following his departure from Government.

In addition, section 207(d) provides that, during the continued service of a partner as a Government employee or special Government employee, his firm is barred from acting in particular matters in which the Government partner has at any time participated, or which is the subject of his official responsibility.

Finally, in order to mark the limits of the imputation doctrine, section 207 provides that a partner of a present or former Government employee or special Government employee in the executive branch, an independent agency, or the District of Columbia, shall as such be subject to the provisions of sections 203, 205, and 207 only as expressly provided in subsections (c) and (d) of section 207.

In short, after a Government employee leaves the Government, his firm must for 2 years stay out of matters in which he has participated for the Government. And while the Government partner remains in the Government, his firm must stay out of matters in which he participates or has participated or which are under his official responsibility. How-

ever, it is not the intent of the provisions of section 207(c) and (d) that the fact that a partner of a Government employee or former Government employee is also a partner in a firm in which the Government employee or former Government employee is not a member should disqualify the latter firm. Existing law with respect to the rights and obligations of partners of officers and employees of the United States in the legislature and judicial branches is left unaffected by the bill.

Mr. Speaker, I wish I had time to discuss in far greater detail the provisions of this bill and the importance of the legislation in general. The chairman of the Committee on the Judiciary has discussed the separate provisions of the bill and I shall not repeat him. Suffice it to say that loopholes are closed and the lines are clarified. At the same time archaic and unnecessary provisions are eliminated.

It is vital at all times that the public interest be safeguarded and that the highest standards of integrity in the public service be maintained. It is equally vital that the Government be able to attract men of ability and competence into Government service. They will not be attracted if the law is so written that they must be unnecessarily penalized for accepting Government service. Both points of view must be accommodated, namely, a body of law which is clear, reasonable, and protects the public from abuse of office, and at the same time which makes possible the recruitment into Government service of men of talent and ability who as public-spirited citizens wish to serve their Government.

I urge the enactment of the bill.

Mr. SANTANGELO. Mr. Speaker, will the gentleman from New York yield for a question?

Mr. LINDSAY. I yield to my colleague from New York.

Mr. SANTANGELO. Some Members of Congress happen to be executors of estates. Under the provisions of this bill would you say that a Member of Congress who as an executor files a Federal estate tax report and seeks to obtain a determination of the Federal tax, is in violation of the conflict of interest statute?

Mr. LINDSAY. I would say to the gentleman that a Member of Congress is in no different position under this bill than he ever has been in the past. This bill does not make any change in substance to the body of law that has built up over Members of Congress. Basically, the answer to the gentleman's question is "no," provided he does not appear personally before a department or agency and receive compensation therefor.

Mr. SANTANGELO. If the gentleman will yield further, as I read the provisions of the report on page 9, it would seem to spell out that there would be a violation and some of the Members have asked for clarification. I would like the record to determine whether or not it is the opinion of my colleague from New York whether this particular filing of a report by an executor who happened to

be a Member of Congress would be a violation of the bill that the gentleman is recommending for adoption.

Mr. LINDSAY. No; if the gentleman will permit me to answer, a Member of Congress is forbidden to accept compensation for appearing before any Government department or agency. That, incidentally, is no change from the present law.

Mr. SANTANGELO. If a Member of Congress is attending a conference to determine the amount of the Federal estate tax, would that be a violation of this particular statute?

Mr. LINDSAY. In my opinion, it would not be.

Mr. CELLER. Mr. Speaker, will the gentleman yield?

Mr. LINDSAY. I yield to the gentleman from New York.

Mr. CELLER. If it involved the filing of a report, I do not think there would be a violation. If it involved appearance and argument before a Federal agency, that would be a different matter.

Mr. SANTANGELO. If a law partner of a Member of Congress took it up, would that be a violation on the part of the partner or of the Member?

Mr. CELLER. I do not think it would be a violation for a law partner of the Member of Congress, unless the Member shared in the emoluments. If the law partner acted separately from the Congressman, I do not think any violation is involved.

Mr. HARRIS. Mr. Speaker, will the gentleman yield?

Mr. LINDSAY. I yield to the gentleman from Arkansas.

Mr. HARRIS. May I ask either the gentleman from New York [Mr. LINDSAY], or the gentleman from New York [Mr. CELLER], if in dealing with the conflict-of-interest in the amendments anything is included in reference to ex parte contacts?

Mr. LINDSAY. Ex parte contacts on the part of outsiders with the agency?

Mr. HARRIS. Ex parte contacts that are made with reference to matters that might be pending before agencies of the Government.

Mr. CELLER. The answer is "No." Ex parte contacts are not covered by the pending bill.

Mr. HARRIS. As the gentleman knows, we have given a great deal of study to this matter in our committee. In view of the investigations we have had in the past, it appears to us that there is need for some approach to these problems. We are trying to work on it, as I know the gentleman's committee is.

Mr. CELLER. We were very careful not to cover this, since it is a matter for your committee.

Mr. HARRIS. I am interested in that there are some questions involved in these problems of the Government that we cannot reach and the gentleman's committee can.

(Mr. LINDSAY asked and was given permission to revise and extend his remarks.)

Mr. McCULLOCH. Mr. Speaker, I yield 2 minutes to the gentleman from Michigan [Mr. HOFFMAN].

(Mr. HOFFMAN of Michigan asked and was given permission to revise and extend his remarks.)

Mr. HOFFMAN of Michigan. Mr. Speaker, knowing the members of the Committee on the Judiciary, I have no doubt this is the best legislation on this subject that could be drawn at this time. There is something in the bill about the "conflict of interest." The bill does apply to Congressmen. Then it states you cannot do anything to get something for yourself. Does that prohibit my voting for an increase in salary?

Mr. McCULLOCH. In my opinion, it would not.

Mr. HOFFMAN of Michigan. Or soliciting the gentleman's support or trying to influence him, if that could be done, and, of course, I assume it could not.

Mr. McCULLOCH. I am of a like opinion in answer to that question, too.

Mr. HOFFMAN of Michigan. Assuming I have a share of stock in a Federal savings and loan association or a share in a national bank, would that prevent me from appearing before the Committee on Ways and Means, urging the committee to vote one way or another on a tax bill, or voting for or against a bill imposing a tax, on either, or exempting either from a tax?

Mr. McCULLOCH. In my opinion, it certainly would not.

Mr. CELLER. Mr. Speaker, I yield 2 minutes to the gentleman from Florida [Mr. BENNETT].

Mr. BENNETT of Florida. Mr. Speaker, I would like to congratulate the chairman and the members of the committee. Usually Members who congratulate a committee are members of that committee, but I am not. I have watched their fine work in bringing up this measure. I note it sets a high standard for the conduct of official business. Further, as President Kennedy has said, "it eliminates the technical deficiencies and anachronisms of existing laws, and makes it possible for the Government to mobilize a wide range of talent and skill."

Mr. Speaker, in 1951, I introduced a bill in this field, H.R. 4389.

In subsequent Congresses, I introduced similar bills. The current bill I introduced in this field is H.R. 302. I am very interested in this general field of legislation. I feel that the committee tackled a very tough subject and did an excellent job. I particularly congratulate the committee on clarifying and modernizing the ancient statutes that we have had on the books heretofore.

The old section 284 refers to "a claim against the United States," which was narrowly construed by the courts.

Section 207(a) of the substitute bill substitutes for this narrow provision things having to do with a "proceeding, contract, claim, controversy," and so forth, which is very much broader language. This legislation covers partners of ex-employees and clarifies a lot of the difficulties in situations like that. It voids contracts if they are found to be the result of a violation of this law.

Mr. Speaker, in sum and total, I think this committee has done an excellent job

on a problem to which it put its shoulders a number of years ago. It has made a scholarly approach to this question, and in my opinion should be very strongly commended by the Congress. I believe this is one of the most important measures to be brought forth by this session of the Congress, and I am very happy to have the opportunity to speak in behalf of this measure today.

Mr. McCULLOCH. Mr. Speaker, I yield 3 minutes to the gentleman from Iowa [Mr. GROSS].

(Mr. GROSS asked and was given permission to revise and extend his remarks.)

Mr. GROSS. Mr. Speaker, with respect to the compensation of Members of Congress, may I ask the gentleman from New York [Mr. CELLER] this question. Does this bill do anything with respect to Members of Congress who are compensated as members of the Armed Forces Reserves?

Mr. CELLER. I will answer categorically, the bill does not affect that problem at all.

Mr. GROSS. The gentleman is aware that Members of Congress are so compensated?

Mr. CELLER. Yes, I am aware of that.

Mr. GROSS. I suspect the gentleman from New York is also aware that a good many years ago, the Congress deprived a Member of the House of Representatives of his membership in Congress because he was receiving compensation as an officer in the armed services while he was a Member of the House. The gentleman has not given that any consideration, I take it?

Mr. CELLER. We have given it consideration. We have made no change in the law in that regard.

Mr. GROSS. Why not?

Mr. CELLER. Because of the very arguments that the gentleman expounded just now.

Mr. GROSS. I did not argue against it. I said the situation developed whereby a Member was deprived of his seat in the House of Representatives because he was also accepting compensation as a member of the Armed Forces and that, it was determined, established a conflict of interest as well as compensation from another branch of Government.

Mr. CELLER. We deemed it advisable not to touch that subject at all.

Mr. GROSS. I see—that is a little different answer than I got the first time.

Now may I ask the gentleman another question. The gentleman spoke of consultants a little while ago. We had the situation of a retired general who was hired by the Pentagon as a consultant to set up a training school in Washington. When the training school was established, upon the recommendation of this retired general, it went to a contract operator and the general then became the directing head of this institution. Today, if he is still there, and I assume he is because I have heard nothing to the contrary, and he has been there for 2 or 3 years, this retired general is drawing dual compensation, a fat salary plus his retirement. Can the gentleman tell

me if this bill does anything to correct that kind of situation?

Mr. CELLER. I will read briefly from the report on the bill at page 10, under the caption "Retired Officers." Under the present law, retired officers of the Armed Forces of the United States while on active duty occupy a peculiar and complex position. They are not, by reason of such status, subject to the provisions of section 281 or 283 of the present conflict-of-interest statutes. We do not cover them in the present bill.

Mr. GROSS. You do nothing about that kind of situation?

Mr. CELLER. No.

Mr. GROSS. I wanted to be able to compliment the committee, but this bill is far short of what it ought to be if it does not go into situations of the kind I have cited.

Mr. McCULLOCH. Mr. Speaker, I ask unanimous consent to revise and extend the original remarks I made on this proposal immediately following the remarks of the gentleman from New York [Mr. CELLER].

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. SANTANGELO. Mr. Speaker, will the gentleman yield?

Mr. CELLER. Mr. Speaker, I yield 1 minute to the gentleman from New [Mr. SANTANGELO].

Mr. SANTANGELO. Mr. Speaker, I want to compliment the committee as far as it has gone, but I am very disappointed that they did not try to solve the problem of the sacred cow, the retired military officer. You may recall that this last year the House passed a bill which sought to eliminate conflicts of interest on the part of officers who had either resigned or retired. The year before that the House defeated my amendment to bar employment to retired officers with defense contractors for 5 years on the promise that there would be an investigation. We passed a bill last year and that bill died in the Senate and nothing has been done in connection with that problem. We hoped the Judiciary Committee would go into the problem that is costing the taxpayers millions of dollars because of conflict of interest; and while I want to compliment you on what you have done in fields other than the military, I think the committee has failed to tackle an important problem, that is, the conflict of interest on the part of retired officers above the rank of captain or colonel. I am sorry that this committee which has worked for 3 years could not have taken another 6 months to solve that very important problem.

It has been brought to my attention that the Defense Department within the past 2 weeks has issued new regulations which, among other things, pertain to activities of retired military officers. I believe this is a significant step, but I, personally, would have preferred that this Code of Conduct be regulated by legislation rather than by Defense Department regulations.

The SPEAKER pro tempore. The question is, Will the House suspend the

rules and pass the bill H.R. 8140, as amended?

The question was taken; and (two-thirds having voted in favor thereof) the bill was passed.

A motion to reconsider was laid on the table.

AMENDING THE NATIONAL AERONAUTICS AND SPACE ACT OF 1958

Mr. BROOKS of Louisiana. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 8095) to amend the National Aeronautics and Space Act of 1958, as amended, and for other purposes.

The Clerk read the title of the bill. The Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the National Aeronautics and Space Act of 1958, as amended, is amended as follows:

(a) Section 203 is amended—

(i) by striking out "to lease to others such real and personal property;" in paragraph (b)(3) and inserting in lieu thereof the following: "to lease to others such real and personal property, and any such lease may provide, notwithstanding section 321 of the Act of June 30, 1932 (40 U.S.C. 303b), or any other provision of law, for the maintenance, protection, repair, or restoration by the lessee, of the property leased, or of the entire unit or installation where a substantial part of it is leased as part or all of the consideration for the lease;"

(ii) by striking out "and" at the end of paragraph (12) of subsection (b), by striking out the period at the end of paragraph (13) of such subsection and inserting in lieu thereof, "; and", and by adding at the end of such subsection the following new paragraph:

"(14) to acquire releases, before suit is brought, for past infringement of patents."

(b) Section 204 is repealed.

(c) Section 205 is redesignated as section 204.

(d) Section 206 is redesignated as section 205, and such section as so designated is amended by striking out "semi-annually" in subsection (a) and by inserting in lieu thereof "once a year".

(e) Section 304 is amended by striking out "certified by the Council or the Administrator, as the case may be," in the first sentence of subdivision (b) and inserting in lieu thereof "certified by the Council or the Administrator or designee thereof, as the case may be,".

(f) Title III is further amended by adding at the end thereof the following new section:

"INDEMNIFICATION"

"SEC. 308. (a) With the approval of the Administrator or his designee, any contract of the Administration for research or development, or both, the performance of which involves a risk of an unusually hazardous nature, may provide that the United States will indemnify the contractor against either or both of the following, but only to the extent that they arise out of the direct performance of the contract and to the extent not covered by the financial protection required under subsection (e):

"(1) Liability (including reasonable expenses of litigation or settlement) to third persons, except liability under State or Federal Workmen's Compensation Acts to employees of the contractor employed at the site of and in connection with the contract for which indemnification is granted, for death, bodily injury, or loss of or damage to property, from a risk that the contract defines as unusually hazardous.

"(2) Loss of or damage to property of the contractor from a risk that the contract defines as unusually hazardous.

"(b) A contract that provides for indemnification in accordance with subsection (a) must also provide for—

"(1) notice to the United States of any claim or suit against the contractor for death, bodily injury, or loss of or damage to property; and

"(2) control of or assistance in the defense by the United States, at its election, of any such suit or claim for which indemnification is provided hereunder.

"(c) No payment may be made under subsection (a) unless the Administrator, or his designee, certifies that the amount is just and reasonable.

"(d) Where the total amount of claims arising out of a single incident and certified under subsection (c)—

"(1) exceeds \$100,000, payments may be made from funds specifically appropriated therefor;

"(2) does not exceed \$100,000, payments may be made from (i) funds obligated for the performance of the contract concerned, or (ii) funds available for research or development, or both, and not otherwise obligated.

"(e) Each contractor which is a party to an indemnification agreement under subsection (a) shall have and maintain financial protection of such type and in such amounts as the Administration shall require to cover liability to third persons and loss of or damage to the contractor's property. The amount of financial protection required shall be the maximum amount of insurance available from private sources, except that the Administration may establish a lesser amount, taking into consideration the cost and terms of private insurance. Such financial protection may include private insurance, private contractual indemnities, self-insurance, other proof of financial responsibility, or a combination of such measures.

"(f) In administering the provisions of this section, the Administration shall use, to the maximum extent practicable, the facilities and services of private insurance organizations, and the Administration may contract to pay a reasonable compensation for such services. Any contract made under the provisions of this subsection may be made without regard to the provisions of section 5 of title 41, upon a showing by the Administration that advertising is not reasonably practicable, and advance payments may be made.

"(g) The authority to indemnify contractors under this section does not create any rights in third persons which would not otherwise exist by law.

"(h) As used in this section, the term 'contractor' includes subcontractors of any tier under a contract in which an indemnification provision pursuant to subsection (a) is contained."

SEC. 2. The Act of April 29, 1941, as amended (50 U.S.C. 270e), is amended (1) by striking out "or the Secretary of the Treasury" and inserting in lieu thereof "the Secretary of the Treasury or the Administrator of the National Aeronautics and Space Administration", and (2) by striking out "or Coast Guard" and inserting in lieu thereof "Coast Guard, or National Aeronautics and Space Administration".

SEC. 3. Section 2302 of title 10 of the United States Code is amended by striking out "or the Administrator of the National Aeronautics and Space Administration." and inserting in lieu thereof "or the Administrator or Deputy Administrator of the National Aeronautics and Space Administration."

The SPEAKER pro tempore. Is a second demanded?

Mr. FULTON. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection a second will be considered as ordered.

The gentleman from Louisiana [Mr. BROOKS] will be recognized for 20 minutes and the gentleman from Pennsylvania, [Mr. FULTON] for 20 minutes.

The gentleman from Louisiana is recognized.

Mr. BROOKS of Louisiana. Mr. Speaker, I yield myself 10 minutes.

The SPEAKER pro tempore. The gentleman from Louisiana is recognized.

Mr. BROOKS of Louisiana. Mr. Speaker, this measure is brought up, as everybody realizes, at a very timely moment in current affairs. The bill itself does not involve the authorization of any money and certainly not the appropriation of any money. It involves a number of changes to the basic National Aeronautics and Space Administration Act, some relatively minor, some of greater importance. I will take them up in the order in which we have set them forth in the bill.

The first of these changes is one that will authorize the National Aeronautics and Space Administration to engage in leases for compensation other than money. For instance, at the NASA field station located on Wallops Island, Va., the local people are very anxious to do some work on the reservation and in return they want the use of a portion of the reservation for grazing purposes. They are willing to maintain the runways and the area around the runways in excellent shape. But NASA is not able to engage in that sort of agreement with those people because under the law, it is required to accept only a cash consideration for leases.

We have thus provided in this measure that in exceptional, and only in exceptional, cases NASA shall be permitted to accept considerations for a lease other than cash considerations.

We have next, in the order of amendments presented in this bill, a provision for settling certain claims arising out of the normal course of NASA's work which involve the infringement of patent rights. There can be certain alleged violations of patent rights. Most of them are relatively small claims. But to allow a delay of such claim settlements could hold up the work of NASA. This bill would authorize NASA to make adjustment in cases of alleged claims of the violation of patent rights.

There is another matter in the bill that is important. We abolish the Civilian-Military Liaison Committee that was established by the Select Committee on Astronautics and Space Exploration, headed by the distinguished majority leader of this House. We find it is not necessary to have this Civilian-Military Liaison Committee. Both NASA and the Department of Defense prefer to have what is called the Aeronautics and Astronautics Coordinating Board. That Board was set by administrative decree and is cochaired by the Deputy Administrator of NASA and by the Director of Defense Research and Engineering of the Defense Department.

That Board is working, they say, very well. Both agencies like the arrangement and have asked that we repeal the authority which we originally gave to the Civilian-Military Liaison Committee. This bill will do that.

It provides a further minor amendment. The original law provided for reports to be made by NASA to the Congress twice a year, or every 6 months. We find that is not necessary. Furthermore, it puts additional labor on the agency. Therefore, we withdraw that provision and simply require one annual report to be given by NASA to the Committee on Science and Astronautics of the Congress of the United States.

We provide also for the delegation of authority in very limited cases involving security matters. For instance, only the Administrator at the present time has authority to authorize certain employees to have access to restricted data. This would allow him to delegate to a designee the authority to act for him in these particular cases. This is a matter of routine, really, that we are relieving him of in this particular change.

Next is a matter that I think should be given consideration by this Congress. That is the matter of indemnification. I appointed a subcommittee, headed by the gentleman from Utah [Mr. KING], to investigate the many aspects of indemnification that could result from a disastrous accident. NASA is dealing with explosives of the greatest violence. I think the chemicals, the liquid propellants, and the materials used by NASA are as potentially violent and explosive as any obtainable in the entire world.

Mr. BROWN. Mr. Speaker, will the gentleman yield?

Mr. BROOKS of Louisiana. I yield to the gentleman from Ohio.

Mr. BROWN. Will the gentleman tell us whether or not in the past the Federal Government has furnished indemnification for contractors making different materials for the Federal Government? In other words, will the Federal Government itself be responsible for the indemnification of the contractors?

Mr. BROOKS of Louisiana. I will be glad to answer that. The armed services do and so does the Atomic Energy Commission. They are dealing with very explosive and very hazardous materials and they have indemnification authority similar to the one we have adopted.

Mr. BROWN. Let me ask one other question. In other words, during World War II the manufacturers of high explosives, such as TNT bombs and so forth, were indemnified by the Federal Government against loss of life in their own plants at the expense of the Federal Government?

Mr. BROOKS of Louisiana. I cannot say that was done in World War II. But I can say that the Defense Department and the Atomic Energy Commission today have such authority and they exercise that authority.

Let me tell my distinguished friend from Ohio that this provision on indemnification does not add one jot or tittle to the obligation of the United States. The United States is still obligated under the general tort laws and

contract laws of the Nation to pay for damages as damages occur as a result of Government activities. This provision simply organizes the method whereby indemnification may be made in the event of an accident. For instance, small claims may be paid without being submitted to Congress, but major claims can be paid only after being authorized by the Congress.

Mr. BROWN. Mr. Speaker, will the gentleman yield further at this point?

Mr. BROOKS of Louisiana. I yield.

Mr. BROWN. Of course, there are a great many hazardous industries in the United States that are not connected in any way with the Federal Government. In those industries often the State workmen's compensation laws apply and the charges and the costs to those hazardous industries for coverage, to cover any damage or loss of life and so forth and so on, sometimes are very high. Now, in connection with this indemnification that the gentleman has been discussing, in the savings that may accrue to the individual contractor or the private contractor as the result of the Government becoming responsible for indemnifying for these losses, are these costs taken into consideration, or those savings, in dealing with the contractors to reduce the cost to the Federal Government that much?

Mr. BROOKS of Louisiana. I am glad the gentleman brought this matter up. The gentleman has given thought, time, and study to it.

Under this bill, for instance, those employees who are covered by State and Federal Workmen's Compensation Acts are not covered by this statute.

Furthermore, I want to call the gentleman's attention to the fact that this provision is going to result in a tremendous saving to the U.S. Government. We require under this particular statute that all private insurance coverage obtainable by a contractor and a subcontractor shall be effective before any recourse can be had against the United States. That may run to \$15 million or \$20 million. Private insurance companies will not insure contractors for more than \$15 million or \$20 million.

But under this bill we require that contractors must have all available private insurance. The Government actually is going to save a lot of money, in the long run, if there are any claims filed under this act.

Mr. BROWN. Mr. Speaker, if the gentleman will yield further; in other words, if I understand the gentleman correctly, this bill in no way eliminates or reduces the responsibility of the contractor in case of accident?

Mr. BROOKS of Louisiana. On the contrary, we make it mandatory that the contractor obtain the insurance to take care of his losses.

Mr. FULTON. Mr. Speaker, will the gentleman yield?

Mr. BROOKS of Louisiana. I yield to my distinguished friend from Pennsylvania.

Mr. FULTON. Tort claims would arise under the laws of the particular local jurisdiction. That would be under the State jurisdiction. And they might

87TH CONGRESS
1ST SESSION

H. R. 8140

IN THE SENATE OF THE UNITED STATES

AUGUST 8, 1961

Read twice and referred to the Committee on the Judiciary

AN ACT

To strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) so much of chapter 11 of title 18 of the United
4 States Code as precedes section 214 is amended to read as
5 follows:

1 **“CHAPTER 11—BRIBERY, GRAFT, AND CONFLICTS** 2 **OF INTEREST**

“Sec.

“201. Bribery of public officials and witnesses.

“202. Definitions.

“203. Compensation of Members of Congress, officers and others, in matters affecting the Government.

“204. Practice in Court of Claims by Members of Congress.

“205. Activities of officers and employees in claims against and other matters affecting the Government.

“206. Exemption of retired officers of the Armed Forces.

“207. Disqualification of former officers and employees in matters connected with former duties or official responsibilities; disqualification of partners.

“208. Acts affecting a personal financial interest.

“209. Salary of Government officials and employees payable only by United States.

“210. Offer to procure appointive public office.

“211. Acceptance or solicitation to obtain appointive public office.

“212. Offer of loan or gratuity to bank examiner.

“213. Acceptance of loan or gratuity by bank examiner.

“214. Offer for procurement of Federal Reserve bank loan and discount of commercial paper.

“215. Receipt of commissions or gifts for procuring loans.

“216. Receipt or charge of commissions or gifts for farm loan, land bank, or small business transactions.

“217. Acceptance of consideration for adjustment of farm indebtedness.

“218. Voiding transactions in violation of chapter; recovery by the United States.

3 **“§ 201. Bribery of public officials and witnesses**

4 “(a) For the purpose of this section:

5 “‘public official’ means Member of Congress, or
 6 Resident Commissioner, either before or after he has
 7 qualified, or an officer or employee or person acting for
 8 or on behalf of the United States, or any department,
 9 agency or branch of Government thereof, in any offi-
 10 cial function, under or by authority of any such depart-

ment, agency, or branch of Government, or a juror;
and

“ ‘person who has been selected to be a public official’ means any person who has been nominated or appointed to be a public official, or has been officially informed that he will be so nominated or appointed; and

“ ‘official act’ means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in his official capacity, or in his place of trust or profit.

“(b) Whoever, directly or indirectly, corruptly gives, offers or promises anything of value to any public official or person who has been selected to be a public official, or offers or promises any public official or any person who has been selected to be a public official to give anything of value to any other person or entity, with intent—

“(1) to influence any official act; or

“(2) to influence such public official or person who has been selected to be a public official to commit or aid in committing, or collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

1 “(3) to induce such public official or such person
2 who has been selected to be a public official to do or omit
3 to do any act in violation of his lawful duty, or

4 “(c) Whoever, being a public official or person selected
5 to be a public official, directly or indirectly, corruptly asks,
6 demands, exacts, solicits, seeks, accepts, receives, or agrees
7 to receive anything of value for himself or for any other per-
8 son or entity, in return for:

9 “(1) being influenced in his performance of any
10 official act; or

11 “(2) being influenced to commit or aid in com-
12 mitting, or to collude in, or allow, any fraud, or make
13 opportunity for the commission of any fraud, on the
14 United States; or

15 “(3) being induced to do or omit to do any act in
16 violation of his official duty; or

17 “(d) Whoever, directly or indirectly, corruptly gives,
18 offers, or promises anything of value to any person, or offers
19 or promises such person to give anything of value to any
20 other person or entity, with intent to influence the testimony
21 under oath or affirmation of such first-mentioned person as a
22 witness upon a trial, hearing, or other proceeding, before
23 any court, any committee of either House or both Houses of
24 Congress, or any agency, commission, or officer authorized
25 by the laws of the United States to hear evidence or take

1 testimony, or with intent to influence such person to absent
2 himself therefrom; or

3 “(e) Whoever, directly or indirectly, corruptly asks,
4 demands, exacts, solicits, seeks, accepts, receives, or agrees
5 to receive anything of value for himself or for any other
6 person or entity in return for being influenced in his testi-
7 mony under oath or affirmation as a witness upon any such
8 trial, hearing, or other proceeding, or in return for absenting
9 himself therefrom—

10 “Shall be fined not more than \$20,000 or three times
11 the monetary equivalent of the thing of value, whichever is
12 greater, or imprisoned for not more than fifteen years, or
13 both, and may be disqualified from holding any office
14 of honor, trust, or profit under the United States.

15 “(f) Whoever, otherwise than as provided by law for
16 the proper discharge of official duty, directly or indirectly
17 gives, offers, or promises anything of value to any public
18 official, former public official, or person selected to be a pub-
19 lic official, for or because of any official act performed or to
20 be performed by such public official, former public official,
21 or person selected to be a public official; or

22 “(g) Whoever, being a public official, former public
23 official, or person selected to be a public official, otherwise
24 than as provided by law for the proper discharge of official
25 duty, directly or indirectly asks, demands, exacts, solicits,

1 seeks, accepts, receives, or agrees to receive anything of
2 value for himself for or because of any official act performed
3 or to be performed by him; or

4 “(h) Whoever, directly or indirectly, gives, offers, or
5 promises anything of value to any person, for or because
6 of the testimony under oath or affirmation given or to be
7 given by such person as a witness upon a trial, hearing, or
8 other proceeding, before any court, any committee of either
9 House or both Houses of Congress, or any agency, com-
10 mission, or officer authorized by the laws of the United
11 States to hear evidence or take testimony, or for or be-
12 cause of his absence therefrom; or

13 “(i) Whoever, directly or indirectly, asks, demands,
14 exacts, solicits, seeks, accepts, receives, or agrees to receive
15 anything of value for himself for or because of the testimony
16 under oath or affirmation given or to be given by him as a
17 witness upon any such trial, hearing, or other proceeding,
18 or for or because of his absence therefrom—

19 “Shall be fined not more than \$10,000 or imprisoned
20 for not more than two years, or both.

21 “(j) Subsections (d), (e), (h), and (i) shall not be
22 construed to prohibit the payment or receipt of witness fees
23 provided by law, or the payment, by the party upon whose
24 behalf a witness is called and receipt by a witness, of

1 the reasonable cost of travel and subsistence incurred and the
2 reasonable value of time lost in attendance at any such trial,
3 hearing, or proceeding, or, in the case of expert witnesses,
4 involving a technical or professional opinion, a reasonable
5 fee for time spent in the preparation of such opinion, and in
6 appearing and testifying.

7 “(k) The offenses and penalties prescribed in this sec-
8 tion are separate from and in addition to those prescribed in
9 sections 1503, 1504, and 1505 of this title.”

10 **“§ 202. Definitions**

11 “(a) For the purpose of sections 203, 205, 207, 208,
12 and 209 of this title the term ‘special Government employee’
13 shall mean an officer or employee of the executive branch
14 of the United States Government, of any independent agency
15 of the United States or of the District of Columbia, who is
16 retained, designated, appointed, or employed to perform, with
17 or without compensation, for not to exceed one hundred and
18 thirty days during any period of three hundred and sixty-
19 five consecutive days, temporary duties either on a full-time
20 or intermittent basis. Notwithstanding section 29 (c) and
21 (d) of the Act of August 10, 1956 (70A Stat. 632; 5
22 U.S.C. 30r (c) and (d)), a Reserve officer of the Armed
23 Forces, or an officer of the National Guard of the United
24 States, unless otherwise an officer or employee of the United

1 States, shall be classified as a special Government employee
2 while on active duty solely for training. A Reserve officer
3 of the Armed Forces or an officer of the National Guard
4 of the United States who is serving a period of extended
5 active duty in excess of one hundred and thirty days shall
6 be classified as an officer of the United States within the
7 meaning of section 203 and sections 205 through 209 and
8 218. The terms 'officer or employee' and 'special Govern-
9 ment employee' as used in sections 203, 205, 207 through
10 209, and 218, shall not include enlisted members of the
11 Armed Forces.

12 “(b) For the purposes of sections 203, 205, and 207
13 of this title, the term 'official responsibility' means the direct
14 administrative or operating authority, whether intermediate
15 or final, and either exercisable alone or with others, and
16 either personally or through subordinates, to approve, dis-
17 approve, or otherwise direct Government action.

18 **“§ 203. Compensation to Members of Congress, officers, and**
19 **others in matters affecting the Government**

20 “(a) Whoever, otherwise than as provided by law for
21 the proper discharge of official duties, directly or indirectly
22 receives or agrees to receive, or asks, demands, solicits, or
23 seeks, any compensation for any services rendered or to be
24 rendered either by himself or another—

1 “(1) at a time when he is a Member of Congress,
2 Member of Congress Elect, Resident Commissioner, or
3 Resident Commissioner Elect; or

4 “(2) at a time when he is an officer or employee of
5 the United States in the executive, legislative, or judicial
6 branch of the Government, or in any agency of the
7 United States, including the District of Columbia,
8 in relation to any proceeding, application, request for a
9 ruling or other determination, contract, claim, controversy,
10 charge, accusation, arrest, or other particular matter in
11 which the United States is a party or has a direct and
12 substantial interest, before any department, agency, court-
13 martial, officer, or any civil, military, or naval commission,
14 or

15 “(b) Whoever, knowingly, otherwise than as provided
16 by law for the proper discharge of official duties, directly
17 or indirectly gives, promises, or offers any compensation for
18 any such services rendered or to be rendered at a time when
19 the person to whom the compensation is given, promised, or
20 offered, is or was such a Member, Commissioner, officer, or
21 employee—

22 “Shall be fined not more than \$10,000 or imprisoned

1 for not more than two years, or both; and shall be incapable
2 of holding any office of honor, trust, or profit under the
3 United States.

4 “(c) A special Government employee shall be sub-
5 ject to subsection (a) only in relation to a particular matter
6 (1) in which he has at any time participated personally and
7 substantially as a Government employee or as a special Gov-
8 ernment employee through decision, approval, disapproval,
9 recommendation, the rendering of advice, investigation or
10 otherwise, or (2) which is or within two years has been a
11 subject of his official responsibility, or (3) which is pending
12 in the department or agency of the Government in which he
13 is serving: *Provided*, That clause (3) shall not apply in the
14 case of a special Government employee who serves no more
15 than fifteen days during any period of three hundred and
16 sixty-five consecutive days.

17 **“§ 204. Practice in Court of Claims by Members of**
18 **Congress**

19 “Whoever, being a Member of Congress, Member of
20 Congress Elect, Resident Commissioner, or Resident Com-
21 missioner Elect, practices in the Court of Claims, shall be
22 fined not more than \$10,000 or imprisoned for not more
23 than two years, or both, and shall be incapable of holding
24 any office of honor, trust, or profit under the United States.

1 “§ 205. Activities of officers and employees in claims
2 against and other matters affecting the Gov-
3 ernment

4 “Whoever, being an officer or employee of the United
5 States in the executive, legislative, or judicial branch of the
6 Government or in any agency of the United States, includ-
7 ing the District of Columbia, otherwise than in the proper
8 discharge of his official duties—

9 “(1) acts as agent or attorney for prosecuting any
10 claim against the United States, or receives any gratu-
11 ity, or any share of or interest in any such claim in
12 consideration of assistance in the prosecution of such
13 claim, or

14 “(2) acts as agent or attorney for anyone before
15 any department, agency, court, court-martial, officer, or
16 any civil, military, or naval commission in connection
17 with any proceeding, application, request for a ruling
18 or other determination, contract, claim, controversy,
19 charge, accusation, arrest, or other particular matter in
20 which the United States is a party or has a direct and
21 substantial interest—

22 “Shall be fined not more than \$10,000 or imprisoned for
23 not more than two years, or both.

1 “A special Government employee shall be subject to the
2 preceding paragraphs only in relation to a particular mat-
3 ter (1) in which he has at any time participated personally
4 and substantially as a Government employee or as a special
5 Government employee through decision, approval, disap-
6 proval, recommendation, the rendering of advice, investiga-
7 tion or otherwise, or (2) which is or within two years has
8 been a subject of his official responsibility, or (3) which is
9 pending in the department or agency of the Government
10 in which he is serving: *Provided*, That clause (3) shall
11 not apply in the case of a special Government employee who
12 serves no more than fifteen days during any period of three
13 hundred and sixty-five consecutive days.

14 “Nothing herein prevents an officer or employee from
15 taking uncompensated action, not inconsistent with the
16 faithful performance of his duties, to aid or assist any person
17 who is the subject of disciplinary, loyalty, or other person-
18 nel administration proceedings with respect to those pro-
19 ceedings.

20 “Nothing herein or in section 203 prevents an officer or
21 employee, including a special Government employee, from
22 acting, with or without compensation, as agent or attorney
23 for or otherwise aiding or assisting his parents, spouse, child,
24 or any person for whom he is serving as guardian, executor,
25 administrator, trustee, or other personal fiduciary except in

1 those matters in which he has participated personally and
2 substantially as a Government employee, through decision,
3 approval, disapproval, recommendation, the rendering of
4 advice, investigation, or otherwise, or which are the sub-
5 ject of his official responsibility, provided that the Govern-
6 ment official responsible for appointment to his position
7 approves.

8 “Nothing herein or in section 203 or 207 prevents
9 a present or former special Government employee from aid-
10 ing or assisting another person in the performance of work
11 under a contract with or for the benefit of the United States
12 provided that the head of such special Government em-
13 ployee’s department or agency shall certify in writing that
14 the national interest requires such aid or assistance.

15 “Such certification shall be published in the Federal
16 Register.

17 “Nothing herein prevents an officer or employee from
18 giving testimony under oath or from making statements
19 required to be made under penalty for perjury or contempt.

20 **“§ 206. Exemption of retired officers of the Armed Forces**

21 “Sections 203 and 205 of this title shall not apply to a
22 retired officer of the Armed Forces of the United States while
23 not on active duty and not otherwise an officer or employee
24 of the United States, or to any person specially excepted by
25 Act of Congress.

1 “§ 207. Disqualification of former officers and employees
2 in matters connected with former duties or offi-
3 cial responsibilities; disqualification of partners

4 “(a) Whoever, having been an officer or employee of
5 the executive branch of the United States Government, of
6 any independent agency of the United States, or of the
7 District of Columbia, including a special Government em-
8 ployee, after his employment has ceased, knowingly acts as
9 agent or attorney for anyone other than the United States
10 in connection with any judicial or other proceeding, applica-
11 tion, request for a ruling or other determination, contract,
12 claim, controversy, charge, accusation, arrest, or other partic-
13 ular matter in which the United States is a party or has a
14 direct and substantial interest and in which he participated
15 personally and substantially as an officer or employee,
16 through decision, approval, disapproval, recommendation,
17 the rendering of advice, investigation, or otherwise, while
18 so employed, or

19 “(b) Whoever, having been so employed, within two
20 years after his last employment has ceased, appears per-
21 sonally before any court or department or agency of the
22 Government as agent, or attorney for, anyone other than
23 the United States in connection with any proceeding, appli-
24 cation, request for a ruling or other determination, contract,
25 claim, controversy, charge, accusation, arrest, or other par-

1 ticular matter in which the United States is a party or
2 directly and substantially interested, and which was under
3 his official responsibility as an officer or employee of the
4 Government at any time within a period of two years prior
5 to the termination of his employment—

6 “Shall be fined not more than \$10,000 or imprisoned
7 for not more than two years, or both.

8 “(c) Whoever, being a partner of a former officer or
9 employee of the executive branch of the United States Gov-
10 ernment, of any independent agency of the United States, or
11 of the District of Columbia, including a former special Gov-
12 ernment employee, engages, during a period of two years
13 following the termination of the latter’s employment by the
14 Government, in any activities which such former officer or
15 employee of the Government or special Government em-
16 ployee is himself prohibited from engaging in by subsection
17 (a) hereof; or

18 “(d) Whoever, being a partner of an officer or
19 employee of the executive branch of the United States Gov-
20 ernment, of any independent agency of the United States,
21 or of the District of Columbia, including a special Govern-
22 ment employee, acts as agent or attorney for anyone
23 other than the United States, in connection with any
24 judicial or other proceeding, application, request for
25 a ruling or other determination, contract, claim, contro-

1 versy, charge, accusation, arrest, or other particular matter
2 in which the United States is a party or has a direct and
3 substantial interest and in which such officer or employee of
4 the Government or special Government employee partici-
5 pates or has participated personally and substantially as a
6 Government employee through decision, approval, disap-
7 proval, recommendation, the rendering of advice, investiga-
8 tion or otherwise, or which is the subject of his official
9 responsibility—

10 “Shall be fined not more than \$5,000, or imprisoned
11 not more than one year, or both.

12 “A partner of a present or former officer or employee of
13 the executive branch of the United States Government, of
14 any independent agency of the United States, or of the
15 District of Columbia or of a present or former special Gov-
16 ernment employee shall as such be subject to the provisions
17 of sections 203, 205, and 207 of this title only as expressly
18 provided in subsections (c) and (d) of this section.

19 **“§ 208. Acts affecting a personal financial interest**

20 “(a) Except as permitted by subsection (b) hereof,
21 whoever, being an officer or employee of the executive
22 branch of the United States Government, of any independent
23 agency of the United States, or of the District of Columbia,
24 including a special Government employee, participates per-
25 sonally and substantially as a Government officer or em-

1 ployee, through decision, approval, disapproval, recommen-
2 dation, the rendering of advice, investigation, or otherwise,
3 in a Government action, proceeding, or other particular
4 matter in which, to his knowledge, he, his spouse, child, part-
5 ner, business organization in which he is serving as officer,
6 director, trustee, partner or employee, or any person or or-
7 ganization with whom he is negotiating or has any arrange-
8 ment concerning prospective employment, has a financial
9 interest,

10 "Shall be fined not more than \$10,000, or imprisoned
11 not more than two years, or both.

12 "(b) Subsection (a) hereof shall not apply (1) if the
13 officer or employee first advises the Government official re-
14 sponsible for appointment to his position of the nature and
15 circumstances of the action, proceeding, or other particular
16 matter and makes full disclosure of the financial interest and
17 receives in advance a written determination made by such
18 official that the interest is not so substantial as to be deemed
19 likely to affect the integrity of the services which the Gov-
20 ernment may expect from such officer or employee, or (2)
21 if, by general rule or regulation published in the Federal
22 Register, the financial interest has been exempted from the
23 requirements of clause (1) hereof as being too remote or
24 too inconsequential to affect the integrity of Government
25 officers' or employees' services.

1 **“§ 209. Salary of Government officials and employees pay-**
2 **able only by United States**

3 “(a) Whoever receives any salary, or any contribu-
4 tion to or supplementation of salary, as compensation for
5 his services as an officer or employee of the executive branch
6 of the United States Government, of any independent
7 agency of the United States, or of the District of Columbia,
8 from any source other than the Government of the United
9 States, except as may be contributed out of the treasury of
10 any State, county, or municipality; or

11 “Whoever, whether an individual, partnership, associa-
12 tion, corporation, or other organization pays, or makes any
13 contribution to, or in any way supplements the salary of,
14 any such officer or employee under circumstances which
15 would make its receipt a violation of this subsection—

16 “Shall be fined not more than \$5,000 or imprisoned not
17 more than one year, or both.

18 “(b) Nothing herein prevents an officer or employee of
19 the executive branch of the United States Government, or of
20 any independent agency of the United States, or of the Dis-
21 trict of Columbia, from continuing to participate in a bona
22 fide pension, retirement, group life, health or accident insur-

1 ance, profit-sharing, stock bonus, or other employee welfare
2 or benefit plan maintained by a former employer.

3 “(c) This section does not apply to a special Govern-
4 ment employee or to an officer or employee of the Govern-
5 ment serving without compensation, whether or not he is a
6 special Government employee, or to any person paying,
7 contributing to, or supplementing his salary as such.”

8 “(d) This section does not prohibit payment or accept-
9 ance of contributions, awards, or other expenses under the
10 terms of the Government Employees Training Act (Public
11 Law 85-507, 72 Stat. 327; 5 U.S.C. 2301-2319, July 7,
12 1958).”

13 (b) Sections 214 and 215 of chapter 11 of title 18 of
14 the United States Code are respectively redesignated sections
15 210 and 211;

16 (c) Sections 216 and 223 of chapter 11 of title 18 of
17 the United States Code are repealed;

18 (d) Sections 217, 218, 219, 220, 221, and 222 of
19 chapter 11 of title 18 of the United States Code are respec-
20 tively redesignated sections 212, 213, 214, 215, 216, and
21 217;

1 (e) Chapter 11 of title 18 of the United States Code
2 is further amended by adding at the end thereof the following
3 new section:

4 **“§ 218. Voiding transactions in violation of chapter; re-**
5 **covery by the United States**

6 “In addition to any other remedies provided by law
7 the President or, under regulations prescribed by him, the
8 head of any department or agency involved, may declare
9 void and rescind any contract, loan, grant, subsidy, license,
10 right, permit, franchise, use, authority, privilege, benefit,
11 certificate, ruling, decision, opinion, or rate schedule awarded,
12 granted, paid, furnished, or published, or the performance
13 of any service or transfer or delivery of any thing to, by
14 or for any agency of the United States or officer or employee
15 of the United States or person acting on behalf thereof, in
16 relation to which there has been a final conviction for any
17 violation of this chapter, and the United States shall be
18 entitled to recover in addition to any penalty prescribed by
19 law or in a contract the amount expended or the thing
20 transferred or delivered on its behalf, or the reasonable
21 value thereof.”

22 SEC. 2. Sections 281 and 283 (except as they may
23 apply to retired officers of the armed forces of the United
24 States), 282 and 284 of chapter 15 of title 18, section 434
25 of chapter 23 of title 18, and section 1914 of chapter 93 of

1 title 18 of the United States Code are repealed and will, re-
2 spectively, be supplanted by sections 203, 205, 204, 207,
3 208, and 209 of title 18 of the United States Code as set
4 forth in section 1 of this Act. All exemptions from the pro-
5 visions of sections 281, 282, 283, 284, 434, or 1914 of title
6 18 of the United States Code heretofore created or author-
7 ized by statute which are in force on the effective date of
8 this Act shall, on and after that date, be deemed to be ex-
9 emptions from sections 203, 204, 205, 207, 208, or 209,
10 respectively, of title 18 of the United States Code except to
11 the extent that they affect officers or employees of the execu-
12 tive branch of the United States Government, of any inde-
13 pendent agency of the United States, or of the District of
14 Columbia, as to whom they are no longer applicable.

15 SEC. 3. Section 190 of the Revised Statutes (5 U.S.C.
16 99) is repealed.

17 SEC. 4. This Act shall take effect ninety days after the
18 date of its enactment.

Passed the House of Representatives August 7, 1961.

Attest:

RALPH R. ROBERTS,

Clerk.

87TH CONGRESS
1ST SESSION

H. R. 8140

AN ACT

To strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes.

August 8, 1961

Read twice and referred to the Committee on the
Judiciary

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF
BUDGET AND FINANCE

(For information only;
should not be quoted
or cited)

Issued June 22, 1962
For actions of June 21, 1962
87th-2d, No. 102

CONTENTS

Appropriations.....	14	Export control.....	13	Poultry.....	1
Area redevelopment.....	27	Extension work.....	38	Prices.....	11,22
Atomic energy.....	18	Farm labor.....	21,28	Procurement.....	8
Budget.....	24	Farm program.....	11,20	Public works.....	25
Census.....	33	Fibers.....	4	Reclamation.....	2
Civil defense.....	3	Foreign affairs.....	39	Retirement.....	16
Communications.....	6	Forestry.....	2,29,40,41	Seeds.....	36
Contracts.....	15	Grain.....	26	Small business.....	32,35
Crop insurance.....	1	Guam.....	1	Stockpiling.....	4,34
Data processing.....	15	Imports.....	27	Sugar.....	23,43
Defense production.....	5	Information.....	27	Taxation.....	7
Disasters.....	11,32	Legislative program.....	19	Tobacco.....	1
Education.....	31	Livestock.....	1	Transportation.....	17,19
Electrification.....	12	Patents.....	37	Virgin Islands.....	2
Expenditures.....	10	Personnel.....	9,16,30	Watersheds.....	11,43

HIGHLIGHTS: House recommitted farm bill. Senate committee reported bills to extend time for filing tobacco allotment lease transfers and increase number of counties in crop insurance program. Senate committee voted to report bill to grant national forest status to certain Taylor Grazing Act lands.

SENATE

1. AGRICULTURE AND FORESTRY COMMITTEE reported the following bills: p. 10443

S. J. Res. 201, with amendment, to extend the time by which a lease transferring a tobacco allotment may be filed (S. Rept. 1612).

S. 2859, without amendment, to increase from 100 to 150 the number of new counties in which crop insurance may be offered each year (S. Rept. 1614).

S. 3120, without amendment, to grant the Secretary of Agriculture additional authority to permit the interstate movement of certain diseased livestock and poultry (S. Rept. 1615).

S. 2121, without amendment, to authorize the Secretary of Agriculture to establish and maintain Federal agricultural services on Guam (S. Rept. 1613).

2. INTERIOR AND INSULAR AFFAIRS COMMITTEE voted to report (but did not actually report) the following bills: pp. D500-01

H. R. 9822, to grant national forest status to certain lands acquired under the exchange provisions of the Taylor Grazing Act.

S. 3112, with amendment, to add certain lands to the Pike National Forest in Colo. and to the Santa Fe and Carson National Forests in N. Mex.

S. 2429, with amendment, to revise the boundaries of the Virgin Islands National Park.

S. 114, to authorize construction of the Waurika reclamation project, Okla.

S. 405, to authorize construction of the Mann Creek reclamation project, Ida.

3. CIVIL DEFENSE. Passed without amendment H. R. 11743, to extend to June 30, 1966, the emergency authority of the President under the Federal Civil Defense Act to deal with the effects of an enemy attack on the Nation. This bill will now be sent to the President. p. 10498
4. STOCKPILING. Agreed to, without amendment, H. Con. Res. 473, providing the express approval of the Congress for the disposition of certain materials from the National stockpile, including silk noils, abaca fiber, sisal fiber, vegetable tannins, and castor oil. This measure will now be sent to the President. pp. 10460-6
5. DEFENSE PRODUCTION. Passed as reported S. 3203, to continue the Defense Production Act for one year, until June 30, 1963. pp. 10466-7
6. COMMUNICATIONS. Continued debate on H. R. 11040, to provide for the establishment of a commercial communications satellite system. pp. 10454-60, 10469-76
7. TAXATION. At the request of Sen. Smathers, H. R. 11879, to extend for one year the existing corporate normal tax rate and certain excise tax rates, was referred to the Finance Committee for further consideration. p. 10498
8. PROCUREMENT. Received from GAO an audit report on the general supply fund of GSA for fiscal year 1961. p. 10442

9. CONFLICT OF INTEREST. Sen. Keating submitted amendments intended to be submitted to H. R. 8140, the conflict-of-interest bill, relating to a system of administrative enforcement for the conflict-of-interest laws, disclosure of certain ex parte communications received by Government agencies from Members of Congress or congressional staff, and gifts to Federal employees by business contacts. pp. 10444-7

10. FEDERAL EXPENDITURES. Sen. Byrd, Va., inserted a Wall Street Journal article "on what to expect from Federal deficit financing." pp. 10452-3

HOUSE

11. FARM PROGRAM. By a vote of 215 to 205, recommitted H. R. 11222, the proposed Food and Agriculture Act of 1962, to the Agriculture Committee. pp. 10501-70, 10584

Agreed. to the following amendments prior to the recommitment:

By Rep. Bass, Tenn., to provide penalties for the offering or receiving money or gifts in connection with the storage of any agricultural product or commodity. p. 10511

By Rep. Mahon to provide that in establishing farm acreage allotments the the Secretary shall give special consideration to farms on which there were acreages of feed grains during 1961 and/or 1962. pp. 10514-5

By Rep. Mahon to provide that the reserve acreage under the national acreage allotment shall not exceed 4 percent. p. 10514

87TH CONGRESS
2^D SESSION

H. R. 8140

IN THE SENATE OF THE UNITED STATES

JUNE 21, 1962

Referred to the Committee on the Judiciary and ordered to be printed

AMENDMENT

Intended to be proposed by Mr. KEATING (for himself and Mr. JAVITS) to the bill (H.R. 8140) to strengthen the criminal laws relating to bribery, graft, and conflict of interest, and for other purposes, viz: On page 21, line 19, insert the following:

1 **§ 501. Policy and purpose**

2 (a) One of the most vital concerns of a free and
3 representative government is the maintenance of moral
4 and ethical standards for their representatives which are
5 above cause for reproach and warrant the confidence of the
6 people. The people are entitled to expect from their elected
7 representatives in the Federal Government and the em-
8 ployees of the legislative branch a standard above that of

1 the marketplace, for these public servants are entrusted with
2 the welfare of the Nation. Yet these standards must be
3 practical and should be fairly representative of the people
4 who elect their representatives. Some conflicts of interest
5 are clearly wrong and should be proscribed by sanctions in
6 the criminal law; however, many are composed of such
7 diverse circumstances, events, and intangible and indirect
8 concerns that only the individual conscience can serve as a
9 practical guide. But there are many possibilities of conflict
10 in that shadowland of conduct for which guidance would be
11 useful and healthy, but for which the criminal law is neither
12 suited nor suitable. Therefore, the Congress finds that a
13 Code of Ethics is desirable for the guidance and protection of
14 its Members and the officers and employees of the legislative
15 branch of Government, establishing the standards of conduct
16 reasonably to be expected of them.

17 (b) It is also the purpose of this resolution to provide
18 for a thorough study and investigation to determine neces-
19 sary and desirable changes in existing conflicts of interest
20 statutes applying to Members of Congress and to officers and
21 employees of the legislative branch, and to develop a com-
22 prehensive Code of Ethics for the guidance of such Members,
23 officers, and employees, by which the purposes of this resolu-
24 tion may be more fully assured in the conduct of the public
25 business in the legislative branch.

1 **§ 502. Establishment of Joint Committee on Ethics**

2 (a) There is hereby established a joint congressional
3 committee to be known as the Joint Committee on Ethics
4 (hereinafter referred to as the joint committee).

5 (b) The joint committee shall be composed of seven
6 Members of the Senate, appointed by the President of the
7 Senate, and seven Members of the House of Representatives,
8 appointed by the Speaker of the House of Representatives.

9 **§ 503. Powers and duties**

10 (a) It shall be the duty of the joint committee to
11 undertake a thorough study and investigation of the ways and
12 means by which the policy objectives set forth in section 1
13 of this resolution can further be assured. In the conduct of
14 such study and investigation the joint committee shall, among
15 other things, determine to what extent existing conflict-of-
16 interest laws or regulations applicable to the legislative
17 branch should be strengthened and it shall recommend a
18 comprehensive Code of Ethics in the formulation of which
19 it shall have considered the following subjects:

20 (1) Outside employment or professional or business ac-
21 tivity by Members of Congress or officers or employees of
22 the legislative branch;

23 (2) Disclosure by Members of Congress or officers or
24 employees of the legislative branch of confidential informa-

1 tion acquired in the course of official duties or the use thereof
2 for personal advantage;

3 (3) Use of their official position by Members of Con-
4 gress or officers or employees of the legislative branch to
5 secure unwarranted privileges or exemptions for themselves
6 or others;

7 (4) Dealing by Members of Congress or officers or
8 employees of the legislative branch in their official capaci-
9 ties with matters in which they have a substantial pecuniary
10 interest;

11 (5) Conduct by Members of Congress or officers or
12 employees of the legislative branch which gives reasonable
13 cause for public suspicion of violation of public trust; and

14 (6) Other matters concerning official propriety and the
15 integrity of the public service as it relates to Members of
16 Congress, officers or employees of the legislative branch.

17 (b) The joint committee shall report to the Senate
18 and the House of Representatives the result of its investiga-
19 tions together with such recommendations for the establish-
20 ment of a Code of Ethics covering the legislative branch as
21 it may deem advisable. Such report shall be submitted no
22 later than June 30, 1963, and the committee shall cease
23 to exist thirty days after the submission of its final report.

24 (c) Vacancies in the membership of the joint commit-
25 tee shall not affect the power of the remaining members to

1 execute the functions of the joint committee, and shall be
2 filled in the same manner as in the case of the original selec-
3 tion. The joint committee shall select a chairman and a vice
4 chairman from among its members.

5 **§ 504. Hearings, subpoenas, disbursements, employees**

6 (a) The joint committee, or any subcommittee
7 thereof, shall have power to hold hearings and to sit and act
8 at such places and times, to require by subpoena or otherwise
9 the attendance of such witnesses and the production of such
10 books, papers, and documents, to administer such oaths, to
11 take such testimony, and to make such expenditures, as it
12 deems advisable. Subpoenas shall be issued under the signa-
13 ture of the chairman of said joint committee, and shall be
14 served by any person designated by him. Amounts appro-
15 priated for the expenses of the joint committee shall be dis-
16 bursed one-half by the Secretary of the Senate and one-half
17 by the Clerk of the House.

18 (b) The joint committee shall have the power to em-
19 ploy and fix the compensation of such experts, consultants,
20 and clerical and stenographic assistants, to procure such
21 printing and binding, and to make such expenditures, as it
22 deems necessary and advisable, subject to the limitations of
23 its appropriations. The joint committee is authorized to
24 utilize the services, information, and facilities of such depart-

1 ments and other agencies of the Government as it may deem
2 appropriate.

3 **§ 505. Limitation of joint committee's powers**

4 The joint committee shall have no power of enforce-
5 ment with respect to any Members of Congress or officer
6 or employee of the legislative branch, and such power is
7 reserved with respect to its Members, officers, or employees
8 to each House or to any committee thereof which has been
9 designated to carry out such functions.

10 **§ 506. Interim code of ethics**

11 For the purposes of guidance for Members of Congress
12 and officers and employees of the legislative branch during
13 the period during which the joint committee is considering
14 the provisions of an appropriate Code of Ethics for Members
15 of Congress and officers or employees of the legislative
16 branch, the Congress hereby adopts the following standards
17 as a guide to such Members, officers, or employees:

18 (a) No Member of Congress, or officer or employee
19 of the legislative branch should have any interest, financial
20 or otherwise, direct or indirect or engage in any business,
21 transaction, or professional activity or incur any obligation
22 of any nature whether financial or moral, which is in sub-
23 stantial conflict with the proper discharge of his duties in
24 the public interest; nor should any Member of Congress,
25 officer or employee of the legislative branch give substantial

1 and reasonable cause to the public to believe that he is acting
2 in breach of his public trust.

3 (b) In addition to the general rule set forth in para-
4 graph (a), the following standards are applied to certain
5 specified transactions:

6 (1) No Member of Congress, or officer or employee of
7 the legislative branch of the Government should accept other
8 employment which will tend to impair his independence of
9 judgment in the exercise of his official duties.

10 (2) No Member of Congress, or officer or employee of
11 the legislative branch of the Government should accept em-
12 ployment or engage in any business or professional activity
13 which will tend to involve his disclosure or use of confiden-
14 tial information which he has gained by reason of his official
15 position or authority.

16 (3) No Member of Congress, or officer or employee of
17 the legislative branch of the Government, should disclose
18 confidential information acquired by him in the course of his
19 official duties or use such information for other than official
20 purposes.

21 (4) No Member of Congress, or officer or employee of
22 the legislative branch of the Government, should use or at-
23 tempt to use his official position to secure unwarranted privi-
24 leges or exemptions for himself or others.

25 (5) A Member of Congress, or officer or employee of

1 the legislative branch of the Government should not by his
2 conduct give reasonable cause for belief that any person can
3 improperly influence him or unduly enjoy his favor in the
4 performance of his official duties, or that he is affected by the
5 kinship, rank, position, or influence of any person or political
6 party.

7 (6) A Member of Congress, or officer or employee of
8 the legislative branch of the Government should endeavor
9 to pursue a course of conduct which will not give reasonable
10 cause for belief that he is likely to violate his trust.

11 (7) Any Member of Congress, or officer or employee of
12 the legislative branch of the Government, having a financial
13 interest, direct or indirect, having a value of \$10,000 or more,
14 in any activity which is subject to the jurisdiction of a regu-
15 latory agency, should file with the Comptroller General a
16 statement setting forth the nature of such interest in such rea-
17 sonable detail, and in accordance with such regulations as
18 shall be prescribed by the Comptroller General. As used
19 herein, the term "regulatory agency" shall include such
20 agencies as shall be designated by the Comptroller General,
21 which list shall be published in the Federal Register as soon
22 as practicable.

23 § 507.

24 Paragraph (o) of subsection 1 of rule XXV of the Stand-
25 ing Rules of the Senate is hereby amended by adding at the

1 end thereof a new subparagraph to be subparagraph (3)
2 to read as follows:

3 “(3) Such committee shall also have the duty to con-
4 sider all matters arising in connection with the application
5 of any code of ethics applicable to Members, officers, or
6 employees of the Senate. The committee shall receive
7 complaints of any violation of such code and may, upon
8 request of any Senator, officer, or employee, give an advi-
9 sory opinion to the Senator, officer, or employee involved on
10 the conformity of any proposed conduct with any such code.”

H. R. 8140

AMENDMENT

Intended to be proposed by Mr. KEATING (for himself and Mr. JAVITS) to the bill (H.R. 8140) to strengthen the criminal laws relating to bribery, graft, and conflict of interest, and for other purposes.

JUNE 21, 1962

Referred to the Committee on the Judiciary and
ordered to be printed

87TH CONGRESS
2D SESSION

H. R. 8140

IN THE SENATE OF THE UNITED STATES

JUNE 21, 1962

Referred to the Committee on the Judiciary and ordered to be printed

AMENDMENT

Intended to be proposed by Mr. KEATING (for himself and Mr. JAVITS) to the bill (H.R. 8140) to strengthen the criminal laws relating to bribery, graft, and conflict of interest, and for other purposes, viz: On page 21, line 19, insert the following:

1 **§ 301. Gifts**

2 (a) GENERAL RULE FOR ALL EMPLOYEES.—No Gov-
3 ernment employee shall receive, accept, take, seek, or
4 solicit, directly or indirectly, any thing of economic value
5 as a gift, gratuity, or favor from any person if such Govern-
6 ment employee has reason to believe the donor would not
7 give the gift, gratuity, or favor but for such employee's
8 office or position within the Government.

1 (b) ADDITIONAL GENERAL RULE FOR REGULAR EM-
2 PLOYEE.—No regular Government employee shall receive,
3 accept, take, seek, or solicit, directly or indirectly, any thing
4 of economic value as a gift, gratuity, or favor from any
5 person, or from any officer or director of such person, if
6 such regular Government employee has reason to believe
7 such person—

8 (1) has or is seeking to obtain contractual or other
9 business or financial relationships with such employee's
10 agency; or

11 (2) conducts operations or activities which are
12 regulated by such employee's agency; or

13 (3) has interests which may be substantially af-
14 fected by such employee's performance or nonperform-
15 ance of official duty.

AMENDMENT

Intended to be proposed by Mr. KEATING (for himself and Mr. JAVITS) to the bill (H.R. 8140) to strengthen the criminal laws relating to bribery, graft, and conflict of interest, and for other purposes.

JUNE 21, 1962

Referred to the Committee on the Judiciary and
ordered to be printed

87TH CONGRESS
2D SESSION

H. R. 8140

IN THE SENATE OF THE UNITED STATES

JUNE 21, 1962

Referred to the Committee on the Judiciary and ordered to be printed

AMENDMENT

Intended to be proposed by Mr. KEATING (for himself and Mr. JAVITS) to the bill (H.R. 8140) to strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes, viz: On page 21, line 19, insert the following:

1 **§ 401. Preventive measures**

2 The head of an agency may, and shall do so if so pro-
3 vided in regulations issued by the President, require—

4 (a) individuals entering Government employment
5 with such agency and, periodically, the employees or
6 particular categories of employees of such agency, to
7 sign a statement that they have read an appropriate

1 summary of the rules established by this Act and the
2 regulations issued hereunder;

3 (b) employees of such agency, or particular cate-
4 gories thereof, to report periodically as to their non-
5 Government employment or self-employment, if any;

6 **§ 402. Remedies; civil penalties; procedure**

7 (a) ADMINISTRATIVE ENFORCEMENT AS TO CURRENT
8 GOVERNMENT EMPLOYEES.—

9 (1) REMEDIES AND CIVIL PENALTIES: The head of
10 an agency may dismiss, suspend, or take such other
11 action as may be appropriate in the circumstances in
12 respect of any Government employee of his agency upon
13 finding that such employee has violated this Act or
14 regulations promulgated hereunder. Such action may
15 include the imposition of conditions of the nature de-
16 scribed in subsection (b) (1).

17 (2) PROCEDURE: The procedures for any such ac-
18 tion shall correspond to those applicable for disciplinary
19 action for employee misconduct generally, and any such
20 action shall be subject to judicial review to the extent
21 provided by law for disciplinary action for misconduct
22 of employees of the same category and grade.

23 (b) ADMINISTRATIVE ENFORCEMENT AS TO FORMER
24 GOVERNMENT EMPLOYEES AND OTHERS.—

25 (1) REMEDIES AND CIVIL PENALTIES: The head

1 of an agency, upon finding that any former employee of
2 such agency or any other person has violated any provi-
3 sion of this Act, may, in addition to any other powers
4 the head of such agency may have, bar or impose
5 reasonable conditions upon—

6 (A) the appearance before such agency of such
7 former employee or other person, and

8 (B) the conduct of, or negotiation or compe-
9 tition for, business with such agency by such former
10 employee or other person,

11 for such period of time as may reasonably be necessary
12 or appropriate to effectuate the purposes of this Act.

13 (2) PROCEDURE.—

14 (A) HEARINGS.—Findings of violations re-
15 ferred to in subsection (b) (1) shall be made on the
16 record after notice and hearing, conducted in ac-
17 cordance with the provisions governing adjudication
18 in title 5, United States Code, secs. 1005, 1006,
19 1007, 1008, and 1011 (Administrative Procedure
20 Act). For the purposes of such hearing any agency
21 head, or any officer designated by it, is empowered
22 to administer oaths and affirmations, subpoena wit-
23 nesses, compel their attendance, take evidence, and
24 require the production of any books, papers, corre-
25 spondence, memoranda, contracts, agreements, or

1 other records which the agency head finds relevant
2 or material to the inquiry. Such attendance of wit-
3 nesses and the production of any such records may
4 be required from any place in the United States at
5 any designated place of hearing. Witnesses sum-
6 moned by the agency head to appear shall be paid
7 the same fees and mileage that are paid witnesses
8 in the courts of the United States.

9 (B) JUDICIAL REVIEW.—(i) Any party to a
10 proceeding under this subsection (b) aggrieved by
11 an order issued by the agency head pursuant hereto,
12 may obtain a review of such order in the court of
13 appeals of the United States for any circuit wherein
14 said party is located or has its principal place of
15 business, or in the United States Court of Appeals
16 for the District of Columbia, by filing in such court
17 within sixty days after the order of the agency
18 upon a written petition praying that such order be
19 modified or set aside in whole or in part.

20 (ii) A copy of such petition shall forthwith be
21 transmitted by the clerk of the court to the agency
22 head involved, and thereupon such agency head
23 shall file with the court the record upon which the
24 order complained of was entered. Upon the filing
25 of such petition, such court shall have jurisdiction,

1 which upon the filing of the record with it shall be
2 exclusive, to affirm, modify, or set aside such order
3 in whole or in part.

4 (iii) No objection to the order of the agency
5 head shall be considered by the court unless such
6 objection shall have been urged before the agency
7 or there is reasonable ground for failure to do so.

8 (iv) The findings of the agency head as to the
9 facts, if supported by substantial evidence, shall be
10 conclusive. If any party shall apply to the court
11 for leave to adduce additional evidence, and shall
12 show to the satisfaction of the court that such addi-
13 tional evidence is material in that there were reason-
14 able grounds for failure to adduce such evidence in
15 the proceedings before the agency, the court may
16 order such additional evidence to be taken before
17 the agency and to be adduced upon the hearing in
18 such manner and upon such terms and conditions
19 as to the court may seem proper.

20 (v) The agency head may modify his findings
21 as to the facts by reason of the additional evidence
22 so taken and shall file with the court such modified
23 or new findings which, if supported by substantial
24 evidence, shall be conclusive, and his recommenda-

tion, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside in whole or in part, any such order of the agency head, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 346 and 347 of title 28. The commencement of proceedings for review under this subsection shall not, unless specifically ordered by the court, operate as a stay of the agency head's order.

(c) CIVIL REMEDY FOR DAMAGES AGAINST EMPLOYEES AND FORMER EMPLOYEES.—The Attorney General of the United States may bring a civil action in any district court of the United States against any Government employee or former Government employee who shall, to his economic advantage, have acted in violation of this Act, and in such action may recover on behalf of the United States, in partial reimbursement of the United States for its expenses of administering this Act, damages in an amount equal to three times the amount of such economic advantage.

(d) PUBLICATION OF CERTAIN FINDINGS AND DECISIONS.—Whenever the head of any agency, or the President, exercises the authority conferred by subsections (a) or (b), of this section, copies of the findings and deci-

1 sion therein shall be filed with the President and shall be
2 published at least once each year as part of a volume col-
3 lecting such findings and opinions. Such volumes shall be
4 made available for public inspection and shall also be made
5 available for distribution or sale to interested persons.

6 (e) INTERESTS OF NATIONAL SECURITY.—When any
7 provision of this Act requires publication of information
8 and the President finds that publication of part or all of
9 such information is inconsistent with national security, he
10 may suspend the requirement of such publication to the ex-
11 tent and for such period of time as he shall deem essential
12 for reasons of national security.

13 (f) STATUTE OF LIMITATIONS.—No administrative or
14 other action under subsections (b) or (c) of this section
15 to enforce any provision of this Act shall be commenced
16 after the expiration of six years following the occurrence
17 of the alleged violation.

18 **§ 403. Civil and criminal remedies**

19 Nothing in sections 401 or 402 of this Act shall be
20 construed to authorize or make lawful anything prohibited
21 or made illegal by sections 201, 203, 205, 207, 209, or
22 301 of this Act nor to exempt any person from the penal
23 provisions thereof.

AMENDMENT

Intended to be proposed by Mr. KEATING (for himself and Mr. JAVITS) to the bill (H.R. 8140) to strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes.

JUNE 21, 1962

Referred to the Committee on the Judiciary and
ordered to be printed

87TH CONGRESS
2D SESSION

H. R. 8140

IN THE SENATE OF THE UNITED STATES

JUNE 21, 1962

Referred to the Committee on the Judiciary and ordered to be printed

AMENDMENT

Intended to be proposed by Mr. KEATING (for himself and Mr. JAVITS) to the bill (H.R. 8140) to strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes, viz: On page 21, line 19, insert the following:

1 **§ 301. Communications to agency**

2 Whenever any matter is pending before any agency for
3 adjudication, and any communication with respect to the
4 status, disposition, or merits thereof is received by such
5 agency from any Member of Congress, the agency shall
6 make such communication, or a true and correct copy thereof,
7 together with a true and correct copy of any response made
8 thereto by the agency, a part of the public record of such

1 adjudicatory proceeding. The true and correct substance of
2 any oral communication received by any agency from any
3 Member of Congress, and the true and correct substance of
4 any oral response made by any agency to any communica-
5 tion received from any Member of Congress, with respect to
6 the status, disposition, or merits of any such adjudicatory
7 matter, shall be reduced to writing by any member, officer,
8 or employee thereof who receives such communication or
9 responds thereto, and such writing shall be treated as a writ-
10 ten communication received by any agency, or a written
11 response made by the agency thereto, as the case may be;
12 and, in addition thereto, a copy thereof shall be sent to the
13 Member of Congress concerned. As used in this subsection—

14 (1) The term “agency” includes any member, officer,
15 or employee of any agency; and

16 (2) The term “Member of Congress” includes (A) any
17 Delegate to Congress or Resident Commissioner in Congress,
18 (B) any employee of any Member of Congress, Delegate to
19 Congress, or Resident Commissioner in Congress, and (C)
20 any employee of any joint committee of the Congress or any
21 committee of either House of the Congress.

AMENDMENT

Intended to be proposed by Mr. KEATING (for himself and Mr. JAVITS) to the bill (H.R. 8140) to strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes.

JUNE 21, 1962

Referred to the Committee on the Judiciary and
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a proposed Amendment No. 2, to extend through October 31, 1963, the concession contract for the Mesa Verde Co., Inc., to provide facilities and services for the public in Mesa Verde National Park, Colo. (with accompanying papers; to the Committee on Interior and Insular Affairs.

**REPORT ON AWARD OF YOUNG AMERICAN
MEDALS FOR BRAVERY AND SERVICE**

A letter from the Attorney General, reporting, pursuant to law, on the award of Young American Medals for Bravery and Service, for the year 1960; to the Committee on the Judiciary.

PETITIONS AND MEMORIALS

Petitions, etc., were laid before the Senate, or presented, and referred as indicated:

By the VICE PRESIDENT:

A resolution adopted at a mass meeting of the American citizens of Baltic descent, at Racine, Wis., protesting against the forceful occupation of Estonia, Latvia, and Lithuania by Soviet Russia on June 15, 1940; to the Committee on Foreign Relations.

**OIL IMPORT CURBS URGED BY
TYLER, TEX., CHAMBER OF COM-
MERCE**

Mr. YARBOROUGH. Mr. President, the board of directors of the Chamber of Commerce of Tyler, Tex., has recently expressed its concern over the high level of oil imports and the resulting damage to the domestic oil industry.

The Tyler Chamber of Commerce board called for immediate action by the U.S. Congress to establish a limitation on U.S. oil imports, thereby relieving the domestic oil industry of an unfair and extremely damaging burden to an important segment of our national economy.

In support of this view, I ask unanimous consent to have printed in the RECORD the following exceptionally well-stated resolution, captioned "Resolution Supporting Stronger U.S. Oil Import Program," and signed by J. Harold Stringer, president of the board of directors of the Tyler Chamber of Commerce.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

**RESOLUTION SUPPORTING STRONGER U.S. OIL
IMPORT PROGRAM**

Whereas U.S. imports of foreign-produced crude oil and petroleum products continue to rise to new record high levels every year despite a Government restriction program and which record was 697 million barrels in 1961, an increase of 32 percent over 1956; and

Whereas imports of crude oil and petroleum products have become the largest single contributor to the development of an unfavorable U.S. trade balance such imports reaching a value of \$1,667 million in 1961 and which imports constituted 11 percent of all U.S. imports and being far more than coffee, the second ranking U.S. import in 1961; and

Whereas this rapid increase in petroleum imports is a major cause of the seriously depressed condition in which the U.S. domestic petroleum industry finds itself today; and

Whereas this depressed condition of the domestic oil industry in the United States is particularly of evidence in the State of Texas and especially in east Texas, as indicated by the following facts:

1. In direct contrast with the large growth of foreign oil imports, and despite an 11.6-percent increase in U.S. petroleum demand, U.S. domestic production of crude oil during 1961 was limited to almost the identical level as in 1956, although there exists a shut-in producing capacity of more than 2½ million barrels per day in the United States.

2. U.S. income from crude oil production is less now than in 1957, due to a decline of 17 cents per barrel, or 5 percent, in average U.S. crude oil prices at a time when domestic producing rates have remained static.

3. Total new wells drilled for oil and gas in the United States has decreased 19 percent since 1956, including a 30-percent decline in wildcat drilling upon which the discovery of new producing sources is dependent.

4. The number of rotary drilling rigs able to find work in the United States has declined by 40 percent since 1956.

5. A decline since 1957 of 25 percent has occurred in number of contracting firms operating rotary drilling rigs in the United States.

6. Total U.S. petroleum industry employees has dropped 11 percent since 1956: Now, therefore, be it

Resolved, That the board of directors of the Tyler Chamber of Commerce meeting at Tyler, Tex., on June 6, 1962, does hereby vigorously urge and request the executive department of the U.S. Government to immediately take steps which will impose an overall limitation on all oil imports from all sources into all areas of the United States to a level that will not exceed the 14-percent relationship of imports to domestic crude oil production that existed in 1956; and be it further

Resolved, That the board of directors of the Tyler Chamber of Commerce advocates and supports immediate action by the U.S. Congress to establish such a limitation on U.S. oil imports.

J. HAROLD STRINGER,
President.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BYRD of Virginia, from the Committee on Finance, with amendments:

H.R. 6682. An act to provide for the exemption of fowling nets from duty (Rept. No. 1607).

By Mr. HICKEY, from the Committee on Interior and Insular Affairs, without amendment:

S. 536. A bill to approve an order of the Secretary of the Interior adjusting, deferring, and canceling certain irrigation charges against non-Indian-owned lands under the Wind River Indian irrigation project, Wyoming, and for other purposes (Rept. No. 1611).

By Mr. CHURCH, from the Committee on Interior and Insular Affairs, without amendment:

S. 3018. A bill to provide for the conveyance of 39 acres of Minnesota Chippewa tribal land on the Fond du Lac Indian Reservation to the SS. Mary and Joseph Church, Sawyer, Minn. (Rept. No. 1609).

By Mr. CHURCH, from the Committee on Interior and Insular Affairs, with amendments:

S. 3224. A bill to declare that the United States holds certain lands on the Eastern Cherokee Reservation in trust for the Eastern Band of Cherokee Indians of North Carolina (Rept. No. 1610).

By Mr. ANDERSON, from the Committee on Interior and Insular Affairs, without amendment:

S. 2971. A bill to declare that certain lands of the United States are held by the United States in trust for the Jicarilla Apache Tribe of the Jicarilla Reservation (Rept. No. 1608).

By Mr. JORDAN, from the Committee on Agriculture and Forestry, without amendment:

S. 2121. A bill to establish Federal agricultural services to Guam, and for other purposes (Rept. No. 1613);

S. 2859. A bill to amend the Federal Crop Insurance Act, as amended, in order to increase the number of new counties in which crop insurance may be offered each year (Rept. No. 1614); and

S. 3120. A bill to amend section 6 of the act of May 29, 1884 (Rept. No. 1615).

By Mr. TALMADGE, from the Committee on Agriculture and Forestry, with amendments:

S.J. Res. 201. Joint resolution to amend section 316 of the Agricultural Adjustment Act of 1938 to extend the time by which a lease transferring a tobacco acreage allotment may be filed (Rept. No. 1612).

**INCREASE OF LIMIT OF EXPENDI-
TURES FOR COMMITTEE ON
FINANCE—REPORT OF A COM-
MITTEE**

Mr. BYRD of Virginia, from the Committee on Finance, reported an original resolution (S. Res. 350); which was referred to the Committee on Rules and Administration, as follows:

Resolved, That the Committee on Finance hereby is authorized to expend from the contingent fund of the Senate, during the Eighty-seventh Congress, \$12,000, in addition to the amount, and for the same purposes, specified in section 134(a) of the Legislative Reorganization Act, approved August 2, 1946.

**BILLS AND JOINT RESOLUTION
INTRODUCED**

Bills and a joint resolution were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. PROXMIRE.

S. 3454. A bill for the relief of Nick Mason-ich; to the Committee on the Judiciary.

By Mr. DOUGLAS:

S. 3455. A bill for the relief of Melynda Kim Zehr (Chun Yoon Nyu) and Michelle Su Zehr (Lim Myung Im); to the Committee on the Judiciary.

By Mr. SMATHERS:

S. 3456. A bill to authorize assistance under the Area Redevelopment Act in the case of any area which has been adversely affected by the imposition by the United States of an embargo on the importation of products from Communist or Communist-dominated countries; to the Committee on Banking and Currency.

By Mr. McCARTHY:

S. 3457. A bill to amend title 3 of the Sugar Act of 1948 to provide for the establishment of fair and reasonable minimum wage rates for workers employed on sugar farms, and for other purposes; to the Committee on Finance.

(See the remarks of Mr. McCARTHY when he introduced the above bill, which appear under a separate heading.)

By Mr. CASE of South Dakota:

S. 3458. A bill to provide relief for residential occupants of unpatented mining claims upon which valuable improvements have been placed, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. FULBRIGHT (by request):

S. 3459. A bill to authorize the appointment of one additional Assistant Secretary of State; to the Committee on Foreign Relations.

(See the remarks of Mr. FULBRIGHT when he introduced the above bill, which appear under a separate heading.)

By Mr. GRUENING:

S. 3460. A bill to authorize the payment of certain claims for structural or other major defects in homes covered by FHA-insured mortgages, and to require indemnification bonds in the case of certain new construction under FHA-insured mortgages; to the Committee on Banking and Currency.

(See the remarks of Mr. GRUENING when he introduced the above bill, which appear under a separate heading.)

By Mr. DIRKSEN:

S.J. Res. 202. Joint resolution to provide for the commemoration of the 175th anniversary of the Constitution of the United States, on September 17, 1962, to the Committee on the Judiciary.

(See the remarks of Mr. DIRKSEN when he introduced the above joint resolution, which appear under a separate heading.)

RESOLUTION

INCREASE OF LIMIT OF EXPENDITURES FOR COMMITTEE ON FINANCE

Mr. BYRD of Virginia, from the Committee on Finance, reported an original resolution (S. Res. 350) increasing the limit of expenditures for the Committee on Finance, which was referred to the Committee on Rules and Administration.

(See the above resolution printed in full when reported by Mr. BYRD of Virginia, which appears under the heading "Reports of Committees.")

AMENDMENT OF TITLE 3 OF THE SUGAR ACT OF 1948

Mr. McCARTHY. Mr. President, I introduce, for appropriate reference, a bill to amend title 3 of the Sugar Act.

This bill deals with the section under which the Secretary of Agriculture is required to determine fair and reasonable wages. It establishes the national minimum wage as a norm, but it also provides that the Secretary, after due notice and public hearing, may make exceptions in case of hardship. It also offers an incentive for producers to meet the standard.

I ask unanimous consent that the bill remain at the desk until the Senate adjourns tomorrow in order that Senators who desire to sponsor the bill may have an opportunity to do so.

The VICE PRESIDENT. The bill will be received and appropriately referred; and, without objection, the bill will lie on the desk, as requested by the Senator from Minnesota.

The bill (S. 3457) to amend title 3 of the Sugar Act of 1948 to provide for the establishment of fair and reasonable minimum wage rates for workers employed on sugar farms, and for other purposes, introduced by Mr. McCARTHY, was received, read twice by its title, and referred to the Committee on Finance.

ADDITIONAL ASSISTANT SECRETARY OF STATE

Mr. FULBRIGHT. Mr. President, by request, I introduce, for appropriate reference, a bill to authorize the appoint-

ment of one additional Assistant Secretary of State.

The proposed legislation has been requested by the Assistant Secretary of State, Mr. Frederick G. Dutton, and I am introducing it in order that there may be a specific bill to which members of the Senate and the public may direct their attention and comments.

I reserve my right to support or oppose this bill, as well as any suggested amendments to it, when the matter is considered by the Committee on Foreign Relations.

I ask unanimous consent that the bill may be printed in the RECORD at this point, together with the letter from the Assistant Secretary of State, dated June 4, 1962, in regard to it.

The VICE PRESIDENT. The bill will be received and appropriately referred; and, without objection, the bill and letter will be printed in the RECORD.

The bill (S. 3459) to authorize the appointment of one additional Assistant Secretary of State, introduced by Mr. FULBRIGHT, by request, was received, read twice by its title, referred to the Committee on Foreign Relations, and ordered to be printed in the RECORD, as follows:

Be it enacted, by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1 of the Act of May 26, 1949, as amended (5 U.S.C. 151a), is amended by striking out "eleven" and inserting in lieu thereof "twelve".

Sec. 2. Section 106(a) (17) of the Federal Executive Pay Act of 1956 (70 Stat. 738) is amended by striking out "(11)" and inserting in lieu thereof "(12)".

The letter presented by Mr. FULBRIGHT is as follows:

DEPARTMENT OF STATE,
Washington, D.C., June 4, 1962.

THE VICE PRESIDENT,
U.S. Senate.

DEAR MR. VICE PRESIDENT: Enclosed is a proposed bill, to authorize the appointment of one additional Assistant Secretary of State, which the Department believes will strengthen executive direction within the Department. This position would be used for the Director of the Bureau of Intelligence and Research. The importance and scope of the job and the need to maintain the Department's position in the intelligence community fully justifies this action.

The Bureau of Intelligence and Research has the dual function of meeting the requirements of the coordinated intelligence community under intelligence directives issued by the National Security Council, and also meeting the Department's own research and intelligence needs. In a rapidly changing world it is essential for sound policymaking that adequate information be available regarding the current situation and the probable future consequence of potential alternative decisions. It is important to attempt to look ahead, to try to anticipate problems or opportunities for American foreign policy and it is also necessary to apply specialized skills to the task of improving the basic assumption on which policy rests.

For these reasons the functions of the Bureau of Intelligence and Research are equivalent in importance to those of the geographic and functional bureaus currently headed by an Assistant Secretary. The enactment of the proposed bill would enable the Department to give more adequate attention to the quality of research activi-

ties and would insure consideration of research information at a high level.

The Department has been informed by the Bureau of the Budget that there would be no objection, from the standpoint of the administration's program, to the presentation of the draft legislation to the Congress for its consideration.

Sincerely yours,

FREDERICK G. DUTTON,
Assistant Secretary
(For the Secretary of State).

COMMEMORATION OF 175TH ANNIVERSARY OF THE CONSTITUTION OF THE UNITED STATES

Mr. DIRKSEN. Mr. President, I call attention to the fact that on the 17th of September 1962 we shall observe the signing of the final draft of the Constitution of the United States at the convention in Philadelphia. I propose to introduce a joint resolution that the 17th day of September 1962 is hereby designated as "the 175th anniversary of the signing of the Constitution of the United States", and the President of the United States is authorized and requested to issue a proclamation inviting the people of the United States to observe and celebrate such date with appropriate ceremonies and activities.

I introduce the joint resolution for appropriate reference.

The VICE PRESIDENT. The joint resolution will be received and appropriately referred.

The joint resolution (S.J. Res. 202) to provide for the commemoration of the 175th anniversary of the Constitution of the United States, on September 17, 1962, introduced by Mr. DIRKSEN, was received, read twice by its title, and referred to the Committee on the Judiciary.

CONFLICT-OF-INTEREST LEGISLATION—AMENDMENTS

Mr. KEATING. Mr. President, the Senate Committee on the Judiciary this morning, held hearings on some extremely important legislation already approved by the House of Representatives. The bill before the committee was H.R. 8140. This bill is the most comprehensive attempt to overhaul our conflict-of-interest statutes in many years.

There are some weaknesses in the bill as it now stands, and I intend to offer for myself and my colleague [Mr. JAVRS] four amendments to improve the bill, which I ask unanimous consent be printed at the conclusion of my remarks and referred to the appropriate committee.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KEATING. Mr. President, the first amendment would incorporate a system of administrative enforcement for the conflict-of-interest laws. The administrative remedies and civil penalties included in the amendment would in no way prevent criminal prosecution but would supplement the criminal provisions of the conflict-of-interest laws. The President's message to Congress of April 27, 1962, on conflict-of-interest leg-

islation recognized the desirability of this dual approach to the enforcement of conflict-of-interest laws.

My second amendment would provide for the disclosure of certain ex parte communications received by Government agencies from Members of Congress or congressional staff.

The third amendment I intend to offer deal with the multitude of conflict-of-interest problems faced by Members of Congress. The amendment provides the machinery for a thorough study of conflict-of-interest problems in the Congress and establishes interim guidelines for Members of Congress to observe until the study is complete. The amendment also permits Senators to submit conflict-of-interest questions to a joint committee for advisory opinions on a nonpartisan basis.

My fourth amendment relates to a much neglected area of conflict of interest—gifts for Federal employees. The effect of this amendment would be to prohibit gifts to Federal employees when the donor has any business contact with the employee or the employee's agency.

Mr. President, I send to the desk the four amendments I intended to offer to H.R. 8140, the conflict-of-interest bill, presently pending in the Senate Committee on the Judiciary. I hope these amendments will be incorporated in the measure which the committee reports. It is my sincere hope and expectation that it will be possible in this session of Congress to enact legislation in this much needed field, which has been the subject of study over a period of many years.

I ask that the amendments be received, printed, and referred to the appropriate committee.

The PRESIDING OFFICER. The amendments will be received, and printed, and referred to the appropriate committee; and, without objection, the amendments will be printed in the RECORD.

The amendments were referred to the Committee on the Judiciary and ordered to be printed in the RECORD, as follows:

On page 21, line 19, insert the following:

"POLICY AND PURPOSE

"SEC. 501. (a) One of the most vital concerns of a free and representative government is the maintenance of moral and ethical standards for their representatives which are above cause for reproach and warrant the confidence of the people. The people are entitled to expect from their elected representatives in the Federal Government and the employees of the legislative branch a standard above that of the marketplace, for these public servants are entrusted with the welfare of the Nation. Yet these standards must be practical and should be fairly representative of the people who elect their representatives. Some conflicts of interest are clearly wrong and should be proscribed by sanctions in the criminal law; however, many are composed of such diverse circumstances, events, and intangible and indirect concerns that only the individual conscience can serve as a practical guide. But there are many possibilities of conflict in that shadowland of conduct for which guidance would be useful and healthy, but for which the criminal law is neither suited nor suitable. Therefore, the Congress finds that a Code of Ethics is desirable for the guidance and pro-

tection of its Members and the officers and employees of the legislative branch of Government, establishing the standards of conduct reasonably to be expected of them.

"(b) It is also the purpose of this resolution to provide for a thorough study and investigation to determine necessary and desirable changes in existing conflicts-of-interest statutes applying to Members of Congress and to officers and employees of the legislative branch, and to develop a comprehensive Code of Ethics for the guidance of such Members, officers, and employees, by which the purposes of this resolution may be more fully assured in the conduct of the public business in the legislative branch.

"ESTABLISHMENT OF JOINT COMMITTEE ON ETHICS

"SEC. 502. (a) There is hereby established a joint congressional committee to be known as the Joint Committee on Ethics (hereinafter referred to as the joint committee).

"(b) The joint committee shall be composed of seven Members of the Senate, appointed by the President of the Senate, and seven Members of the House of Representatives, appointed by the Speaker of the House of Representatives.

"POWERS AND DUTIES

"SEC. 503. (a) It shall be the duty of the joint committee to undertake a thorough study and investigation of the ways and means by which the policy objectives set forth in section 1 of this resolution can further be assured. In the conduct of such study and investigation the joint committee shall, among other things, determine to what extent existing conflict-of-interest laws or regulations applicable to the legislative branch should be strengthened and it shall recommend a comprehensive Code of Ethics in the formulation of which it shall have considered the following subjects:

"(1) Outside employment or professional or business activity by Members of Congress or officers or employees of the legislative branch;

"(2) Disclosure by Members of Congress or officers or employees of the legislative branch of confidential information acquired in the course of official duties or the use thereof for personal advantage;

"(3) Use of their official position by Members of Congress or officers or employees of the legislative branch to secure unwarranted privileges or exemptions for themselves or others;

"(4) Dealing by Members of Congress or officers or employees of the legislative branch in their official capacities with matters in which they have a substantial pecuniary interest;

"(5) Conduct by Members of Congress or officers or employees of the legislative branch which gives reasonable cause for public suspicion of violation of public trust; and

"(6) Other matters concerning official propriety and the integrity of the public service as it relates to Members of Congress, officers or employees of the legislative branch.

"(b) The joint committee shall report to the Senate and the House of Representatives the result of its investigations together with such recommendations for the establishment of a Code of Ethics covering the legislative branch as it may deem advisable. Such report shall be submitted no later than June 30, 1963, and the committee shall cease to exist thirty days after the submission of its final report.

"(c) Vacancies in the membership of the joint committee shall not affect the power of the remaining members to execute the functions of the joint committee, and shall be filled in the same manner as in the case of the original selection. The joint committee shall select a chairman and a vice chairman from among its members.

"HEARINGS, SUBPENAS, DISBURSEMENTS, EMPLOYEES

"SEC. 504 (a) The joint committee, or any subcommittee thereof, shall have power to hold hearings and to sit and act at such places and times, to require by subpoena or otherwise the attendance of such witnesses and the production of such books, papers, and documents, to administer such oaths, to take such testimony, and to make such expenditures, as it deems advisable. Subpenas shall be issued under the signature of the chairman of said joint committee, and shall be served by any person designated by him. Amounts appropriated for the expenses of the joint committee shall be disbursed one-half by the Secretary of the Senate and one-half by the Clerk of the House.

"(b) The joint committee shall have the power to employ and fix the compensation of such experts, consultants, and clerical and stenographic assistants, to procure such printing and binding, and to make such expenditures, as it deems necessary and advisable, subject to the limitations of its appropriations. The joint committee is authorized to utilize the services, information, and facilities of such departments and other agencies of the Government as it may deem appropriate.

"LIMITATION OF JOINT COMMITTEE'S POWERS

"SEC. 505. The joint committee shall have no power of enforcement with respect to any Members of Congress or officers or employees of the legislative branch, and such power is reserved with respect to its Members, officers, or employees to each House or to any committee thereof which has been designated to carry out such functions.

"INTERIM CODE OF ETHICS

"SEC. 506. For the purposes of guidance for Members of Congress and officers and employees of the legislative branch during the period during which the joint committee is considering the provisions of an appropriate Code of Ethics for Members of Congress and officers or employees of the legislative branch, the Congress hereby adopts the following standards as a guide to such Members, officers, or employees:

"(a) No Member of Congress, or officer or employee of the legislative branch should have any interest, financial or otherwise, direct or indirect or engage in any business, transaction, or professional activity or incur any obligation of any nature whether financial or moral, which is in substantial conflict with the proper discharge of his duties in the public interest; nor should any Member of Congress, officer or employee of the legislative branch give substantial and reasonable cause to the public to believe that he is acting in breach of his public trust.

"(b) In addition to the general rule set forth in paragraph (a), the following standards are applied to certain specified transactions:

"(1) No Member of Congress, or officer or employee of the legislative branch of the Government should accept other employment which will tend to impair his independence of judgment in the exercise of his official duties.

"(2) No Member of Congress, or officer or employee of the legislative branch of the Government should accept employment or engage in any business or professional activity which will tend to involve his disclosure or use of confidential information which he has gained by reason of his official position or authority.

"(3) No Member of Congress, or officer or employee of the legislative branch of the Government, should disclose confidential information acquired by him in the course of his official duties or use such information for other than official purposes.

"(4) No Member of Congress, or officer or employee of the legislative branch of the

Government, should use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.

"(5) A Member of Congress, or officer or employee of the legislative branch of the Government should not by his conduct give reasonable cause for belief that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position, or influence of any person or political party.

"(6) A Member of Congress, or officer or employee of the legislative branch of the Government should endeavor to pursue a course of conduct which will not give reasonable cause for belief that he is likely to violate his trust.

"(7) Any Member of Congress, or officer or employee of the legislative branch of the Government, having a financial interest, direct or indirect, having a value of \$10,000 or more, in any activity which is subject to the jurisdiction of a regulatory agency, should file with the Comptroller General a statement setting forth the nature of such interest in such reasonable detail, and in accordance with such regulations as shall be prescribed by the Comptroller General. As used herein, the term "regulatory agency" shall include such agencies as shall be designated by the Comptroller General, which list shall be published in the Federal Register as soon as practicable.

"SEC. 507. Paragraph (o) of subsection 1 of rule XXV of the Standing Rules of the Senate is hereby amended by adding at the end thereof a new subparagraph to be subparagraph (3) to read as follows:

"(3) Such committee shall also have the duty to consider all matters arising in connection with the application of any code of ethics applicable to Members, officers, or employees of the Senate. The committee shall receive complaints of any violation of such code and may, upon request of any Senator, officer, or employee, give an advisory opinion to the Senator, officer, or employee involved on the conformity of any proposed conduct with any such code."

On page 21, line 19, insert the following:

"SEC. 301. GIFTS.

"(a) GENERAL RULE FOR ALL EMPLOYEES.—No Government employee shall receive, accept, take, seek, or solicit, directly or indirectly, any thing of economic value as a gift, gratuity, or favor from any person if such Government employee has reason to believe the donor would not give the gift, gratuity, or favor but for such employee's office or position within the Government.

"(b) ADDITIONAL GENERAL RULE FOR REGULAR EMPLOYEE.—No regular Government employee shall receive, accept, take, seek, or solicit, directly or indirectly, any thing of economic value as a gift, gratuity, or favor from any person, or from any officer or director of such person, if such regular Government employee has reason to believe such person—

"(1) has or is seeking to obtain contractual or other business or financial relationships with such employee's agency; or

"(2) conducts operations or activities which are regulated by such employee's agency; or

"(3) has interests which may be substantially affected by such employee's performance or nonperformance of official duty."

On page 21, line 19, insert the following:

"SEC. 401. PREVENTIVE MEASURES.

"The head of an agency may, and shall do so if so provided in regulations issued by the President, require—

"(a) individuals entering Government employment with such agency and, periodically, the employees of particular categories of employees of such agency, to sign a statement that they have read an appropriate

summary of the rules established by this Act and the regulations issued hereunder;

"(b) employees of such agency, or particular categories thereof, to report periodically as to their non-Government employment or self-employment, if any;

"SEC. 402. REMEDIES; CIVIL PENALTIES; PROCEDURE

"(a) ADMINISTRATIVE ENFORCEMENT AS TO CURRENT GOVERNMENT EMPLOYEES.—

"(1) Remedies and Civil Penalties: The head of an agency may dismiss, suspend, or take such other action as may be appropriate in the circumstances in respect of any Government employee of his agency upon finding that such employee has violated this Act or regulations promulgated hereunder. Such action may include the imposition of conditions of the nature described in subsection (b) (1).

"(2) Procedure: The procedures for any such action shall correspond to those applicable for disciplinary action for employee misconduct generally, and any such action shall be subject to judicial review to the extent provided by law for disciplinary action for misconduct of employees of the same category and grade.

"(b) ADMINISTRATIVE ENFORCEMENT AS TO FORMER GOVERNMENT EMPLOYEES AND OTHERS.—

"(1) Remedies and Civil Penalties: The head of an agency, upon finding that any former employee of such agency or any other person has violated any provision of this Act, may, in addition to any other powers the head of such agency may have, bar or impose reasonable conditions upon—

"(A) the appearance before such agency of such former employee or other person, and

"(B) the conduct of, or negotiation or competition for, business with such agency by such former employee or other person, for such period of time as may reasonably be necessary or appropriate to effectuate the purposes of this Act.

"(2) Procedure:

"(A) Hearings.—Findings of violations referred to in subsection (b) (1) shall be made on the record after notice and hearing, conducted in accordance with the provisions governing adjudication in title 5, United States Code, secs. 1005, 1006, 1007, 1008, and 1011 (Administrative Procedure Act). For the purposes of such hearing any agency head, or any officer designated by it, is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which the agency head finds relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States at any designated place of hearing. Witnesses summoned by the agency head to appear shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

"(B) Judicial review.—(i) Any party to a proceeding under this subsection (b) aggrieved by an order issued by the agency head pursuant thereto, may obtain a review of such order in the court of appeals of the United States for any circuit wherein said party is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court within sixty days after the order of the agency upon a written petition praying that such order be modified or set aside in whole or in part.

"(ii) A copy of such petition shall forthwith be transmitted by the clerk of the court to the agency head involved, and thereupon such agency head shall file with the court the record upon which the order complained

of was entered. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part.

"(iii) No objection to the order of the agency head shall be considered by the court unless such objection shall have been urged before the agency or there is reasonable ground for failure to do so.

"(iv) The findings of the agency head as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material in that there were reasonable grounds for failure to adduce such evidence in the proceedings before the agency, the court may order such additional evidence to be taken before the agency and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper.

"(v) The agency head may modify his findings as to the facts by reason of the additional evidence so taken and shall file with the court such modified or new findings which, if supported by substantial evidence, shall be conclusive, and his recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside in whole or in part, any such order of the agency head, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 346 and 347 of title 28. The commencement of proceedings for review under this subsection shall not, unless specifically ordered by the court, operate as a stay of the agency head's order.

"(c) CIVIL REMEDY FOR DAMAGES AGAINST EMPLOYEES AND FORMER EMPLOYEES.—The Attorney General of the United States may bring a civil action in any district court of the United States against any Government employee or former Government employee who shall, to his economic advantage, have acted in violation of this Act, and in such action may recover on behalf of the United States, in partial reimbursement of the United States for its expenses of administering this Act, damages in an amount equal to three times the amount of such economic advantage.

"(d) PUBLICATION OF CERTAIN FINDINGS AND DECISIONS.—Whenever the head of any agency, or the President, exercises the authority conferred by subsections (a) or (b), of this section, copies of the findings and decision therein shall be filed with the President and shall be published at least once each year as part of a volume collecting such findings and opinions. Such volumes shall be made available for public inspection and shall also be made available for distribution or sale to interested persons.

"(e) INTERESTS OF NATIONAL SECURITY.—When any provision of this Act requires publication of information and the President finds that publication of part or all of such information is inconsistent with national security, he may suspend the requirement of such publication to the extent and for such period of time as he shall deem essential for reasons of national security.

"(f) STATUTE OF LIMITATIONS.—No administrative or other action under subsections (b), or (c) of this section to enforce any provision of this Act shall be commenced after the expiration of six years following the occurrence of the alleged violation.

"SEC. 403. CIVIL AND CRIMINAL REMEDIES.—Nothing in sections 401 or 402 of this Act shall be construed to authorize or make lawful anything prohibited or made illegal by Sections 201, 203, 205, 207, 209 or 301 of this Act nor to exempt any person from the penal provisions thereof."

On page 21, line 19, insert the following:
 "SEC. 301. COMMUNICATIONS TO AGENCY.—Whenever any matter is pending before any agency for adjudication, and any communication with respect to the status, disposition, or merits thereof is received by such agency from any Member of Congress, the agency shall make such communication, or a true and correct copy thereof, together with a true and correct copy of any response made thereto by the agency, a part of the public record of such adjudicatory proceeding. The true and correct substance of any oral communication received by any agency from any Member of Congress, and the true and correct substance of any oral response made by any agency to any communication received from any Member of Congress, with respect to the status, disposition, or merits of any such adjudicatory matter, shall be reduced to writing by any member, officer, or employee thereof who receives such communication or responds thereto, and such writing shall be treated as a written communication received by any agency, or a written response made by the agency thereto, as the case may be; and, in addition thereto, a copy thereof shall be sent to the Member of Congress concerned. As used in this subsection—

"(1) The term 'agency' includes any member, officer, or employee of any agency; and

"(2) The term 'Member of Congress' includes (A) any Delegate to Congress or Resident Commissioner in Congress, (B) any employee of any Member of Congress, Delegate to Congress, or Resident Commissioner in Congress, and (C) any employee of any joint committee of the Congress or any committee of either House of the Congress."

Mr. JAVITS. Mr. President, I, too, testified on H.R. 8140, the conflict of interest bill, today. I am very pleased to see and join in the amendments which my colleague [Mr. KEATING] will present to the committee. I myself authored a bill, S. 603, which carries the recommendations of the Bar Association of the city of New York on this subject, which would carry out a number of the provisions to which reference has been made.

The representative of the bar association testified this morning. I testified myself, urging that the committee give close attention to his testimony.

I have sponsored, with my colleague [Mr. KEATING], as cosponsor, a bill, S. 637, which would deal with the particular problem to which he refers, on communications by Members of Congress to the executive departments.

I wish to state that if the committee does not adopt this amendment—and I hope very much it will—I certainly intend that the matter be raised by amendment in the Senate.

I think the matter of gifts, to which the Senator referred, is much better covered by the bar association recommendations than by the provisions of the House bill.

The one very critical matter to which I wish to invite the attention of the Senate and the attention of my colleague from New York is the fact that the House bill would include Members of Congress in certain of its prohibitions and therefore would give to the Department of Justice the initiating authority to bring about certain prosecutions of Members of Congress.

Senate Concurrent Resolution 10, which I submitted last year also with

Senator KEATING as cosponsor, would give the regulation of a code of ethics for Members of Congress to the Congress itself, very much along the same lines referred to by my colleague [Mr. KEATING]. I think it important that all Members should realize that we must insist on this approach, because I know of few things which could as easily give to the executive department a club over the Congress as the power with respect to conflict of interest, if given to the Department of Justice under a criminal statute.

Mr. President, this is something about which we must be extremely vigilant. It is something which goes much deeper than a statute; desirable, critical, and important as the statute may be. I mention it because it comes within the same context to which the Judiciary Committee is directing its attention.

I hope very much the committee will carefully evaluate the power over individual members which would be vested in the executive department if a criminal sanction to be administered by the Department of Justice were operative in respect to a conflict of interest statute, rather than the power of each House to expel a Member, if it were felt the action should be that extreme, or the power of the voters, once the matter was made public, to deal with the question as the voters can and should.

Many of these conflict of interest areas are so gray that I think this deserves the most profound consideration, to be sure we would not thereby be jeopardizing the independence and the integrity of the legislative branch as the third branch of the Government. I hope very much the committee will give that its most serious attention as it evaluates the House bill, because I respectfully feel enough concern is not reflected in the provisions of the House bill. What I have provided in Senate Concurrent Resolution 10 and what my colleague [Mr. KEATING] has referred to in terms of regulation intra-Congress is very much sounder and very much better for the constitutional system.

ADDRESSES, EDITORIALS, ARTICLES, ETC., PRINTED IN THE APPENDIX

On request, and by unanimous consent, addresses, editorials, articles, etc., were ordered to be printed in the Appendix, as follows:

By Mr. RANDOLPH:

Remarks in introducing former President Harry S. Truman; remarks by Gov. W. W. Barron; invocation by Rev. John F. Streng, D.D., of Wheeling; and benediction by Rev. Frank Rowley, of Bluefield, all pertaining to ceremonies commemorating the 99th anniversary of West Virginia statehood.

By Mr. PROXMIRE:

Article entitled "Ratings, Not Public Interest, Still King of Video—Little Hope for Better," written by Ivan Kaye and published in the Capital Times, of Madison, Wis.

By Mr. MUNDT:

Article entitled "Secret Service Gets No Pay," published in the Washington (D.C.) Evening Star of June 20, 1962; and testimony of Chief James J. Rowley of the Secret Service, before the Senate Committee on

Appropriations, relating to the second supplemental appropriations bill.

By Mr. BYRD of Virginia:

Article entitled "Business Outlook—Kennedy's Tax Policy Questioned," written by J. H. Livingston and published in a recent issue of the Washington Post.

By Mr. WILEY:

Editorial entitled "Tax Cuts and Spending," published in the Green Bay (Wis.) Press Gazette.

Editorial entitled "Myth of Russian Industry Is Debunked," published in the La Crosse (Wis.) Tribune.

By Mr. JAVITS:

Proclamation issued by Governor Rockefeller, of New York, relating to Young Israel Week.

By Mr. WILLIAMS of New Jersey:

Article entitled "Youngsters Help Seniors Push Medicare," published in the Jersey City (N.J.) Journal of June 7, 1962.

Article entitled "Mrs. Roosevelt Helps Town Remember Man Both Loved," written by Joseph Periale and published in the Newark (N.J.) Evening News of recent date.

Article entitled "Students Seek to Aid Migrants," published in the Washington Post of June 9, 1962, regarding the plight of migrant workers and their children.

Article entitled "Radio Station WMCA's Crusade for Reapportionment Calls Attention to Growing Practice," written by Jack Gould and published in the New York Times of June 13, 1962.

Article entitled "New Jersey Worker in Thailand Wins Praise," written by Phil Newsome, and published in the Camden (N.J.) Courier Post of June 5, 1962, being a tribute to Matt Kerbec for his efforts in making friends for the United States.

DR. JOHN DANIEL ROBINSON: A GREAT PHYSICIAN

Mr. ERVIN. Mr. President, on June 1, 1962, North Carolina lost by death one of her very finest citizens, Dr. John Daniel Robinson, who had engaged in the general practice of medicine at Wallace for 46 years. He was survived by his widow, Mrs. Lewellyn W. Robinson, whose father, the late Dr. R. Murphy Williams, was one of the ablest ministers of the Southern Presbyterian Church of all time.

While he always devoted his major efforts to the practice of his profession, Dr. Robinson could say with Ulysses, "I am a part of all that I have met." He was active in every cause designed to promote the well-being of his community and his State. He was particularly active in governmental and political affairs, serving for several terms as a member of the Board of Commissioners of Duplin County. He was a candidate of the Democratic Party for presidential elector on six different occasions, a record probably unequalled in the annals of our country. He loved people and numbered his friends by the thousands.

When all is said, the influence of Dr. Robinson and Mrs. Robinson has resulted in much good in civic affairs throughout North Carolina. For a time, Mrs. Robinson served as president of the North Carolina Federation of Women's Clubs.

They maintained a beautiful home in Wallace, whose doors were always open to their friends. As persons who have been privileged to partake of their gracious hospitality, Mrs. Ervin and I can

testify that no guests ever had a more genial host and a more charming hostess.

Dr. Robinson was a family physician in the grandest sense of the term. In the words of Voltaire, he knew "the properties of the human body, the diseases which assail it, the remedies which will benefit it," and exercised the art of healing with complete dedication to his patients and paid "equal attention to the rich and the poor."

Good repute and happiness were his because he was faithful to this oath, which tradition says, was originated by a great physician, Hippocrates, 400 years before the birth of Christ.

I do solemnly swear by that which I hold most sacred: That I will be loyal to the profession of medicine and just and generous to its members; that I will lead my life and practice my art in uprightness and honor; that into whatsoever house I shall enter, it shall be for the good of the sick to the utmost of my power, I holding myself aloof from wrong, from corruption, and from the tempting of others to vice; that I will exercise my art solely for the cure of my patients, and will give no drug, perform no operation for a criminal purpose, even if solicited, far less suggest it; that whatsoever I shall see or hear of the lives of men which is not fitting to be spoken, I will keep inviolably secret. These things I do promise, and in proportion as I am faithful to this my oath may happiness and good repute be ever mine—the opposite if I shall be forsworn.

Mr. President, I ask unanimous consent that portions of an article concerning Dr. Robinson which appeared in the *Wallace Enterprise* for June 4, 1962, be printed at this point in the body of the RECORD.

There being no objection, the extracts were ordered to be printed in the RECORD, as follows:

Residents of the Wallace area feel deeply the loss of Dr. John Daniel Robinson, 75, a country doctor and general practitioner in Wallace for the past 46 years.

Dr. Robinson became ill at his home in Wallace Thursday evening, May 30, and was rushed to James Walker Memorial Hospital in Wilmington, where he succumbed on Friday, June 1. He was 75 years of age.

The widely known Wallace physician was very active up until the time he was stricken, having worked diligently for the endorsement of the Wallace sewer bond issue throughout the week prior to his death.

Dr. Robinson was a native of Ivanhoe, moving to Wallace temporarily to practice medicine. During the more than 40 years that ensued, the doctor delivered more than 3,000 babies. By his many contributions to the political and civic life of the Wallace area, in addition to his outstanding service as a physician Dr. Robinson came to fill a most important place in the community.

John Daniel Robinson attended Faison Military Academy, Davidson College, the University of Maryland, University of Edinburgh in Scotland, and served with the U.S. Army Air Force during World War I, as a lieutenant colonel. He was past president of the Duplin County Medical Society, and past president of the Third District Medical Society.

Dr. Robinson was named "Tar Heel of the Week" in the *News and Observer* several years ago. At that time he was believed to have set a record for having been presidential elector more than any other person in the country. He was elector six times.

He served as a member of the Duplin County Board of Commissioners for several terms and was at one time chairman of the board.

He had also been a member of the Duplin County Democratic Executive Committee for many years.

Dr. Robinson was a member and trustee of the Wallace Presbyterian Church, a member of the Wallace Lions Club, and a past commander of the Wallace American Legion. In addition, he was medical officer for the National Guard of Wallace.

EXECUTIVE SESSION

Mr. SMATHERS. Mr. President, I ask unanimous consent that the Senate consider the Executive Calendar as in executive session.

The VICE PRESIDENT. Is there objection?

There being no objection, the Senate proceeded to consider executive business.

EXECUTIVE MESSAGE REFERRED

The VICE PRESIDENT laid before the Senate a message from the President of the United States submitting the nomination of Charles Edward Rhett, of Indiana, to be Ambassador Extraordinary and Plenipotentiary to Liberia, which was referred to the Committee on Foreign Relations.

EXECUTIVE REPORTS OF COMMITTEES

The following favorable reports of nominations were submitted:

By Mr. THURMOND, from the Committee on Armed Services:

Col. Arthur R. DeBoit, for appointment in the Air Force Reserve, in the grade of brigadier general.

EXECUTIVE REPORTS OF COMMITTEE ON ARMED SERVICES

Mr. SALTONSTALL. Mr. President, from the Committee on Armed Services, I report favorably 437 nominations in the Navy and Marine Corps, in the grade of captain and below. All of these names have already appeared in the CONGRESSIONAL RECORD, so in order to save the expense of printing on the Executive Calendar, I ask unanimous consent that they be ordered to lie on the Secretary's desk, for the information of any Senator.

The VICE PRESIDENT. Is there objection? The Chair hears none, and the nominations will lie on the desk, as requested by the Senator from Massachusetts.

The nominations are as follows:

Van P. Liacopoulos and John N. Luebbemann, midshipmen (Naval Academy), to be permanent ensigns in the line of the Navy;

Ernest G. Koehler (Naval Reserve Officers' Training Corps candidate), to be a permanent ensign in the line of the Navy;

Jesse W. Armstrong, and sundry other graduates from Navy enlisted scientific education program, to be permanent ensigns in the Navy;

Frederick G. Doell, and sundry other graduates from Navy enlisted scientific education program, to be permanent lieutenants (junior grade) in the Navy;

Richard F. Ambur, and sundry other Naval Reserve officers, to be permanent lieutenants (junior grade) and temporary lieutenants in the Navy;

John C. Folsiak and Donald M. Phillips (Naval Reserve officers), to be permanent

lieutenants in the Medical Corps of the Navy;

Judson H. Jenkins, and sundry other officers of the Navy, for permanent promotion in the Navy;

Bobby D. Chambless, and sundry other officers of the Marine Corps, for permanent promotion in the Marine Corps; and

Thomas V. Barrett, and sundry other officers of the Marine Corps, for temporary promotion in the Marine Corps.

The VICE PRESIDENT. If there be no further reports of committees, the clerk will state the nomination on the Executive Calendar.

U.S. ASSAY OFFICE

The legislative clerk read the nomination of John P. Botti, of New York, to be superintendent of the U.S. assay office at New York, N.Y.

The VICE PRESIDENT. Without objection, the nomination is confirmed.

Mr. SMATHERS. I ask unanimous consent that the President be immediately notified of the confirmation of the nomination.

The VICE PRESIDENT. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. SMATHERS. Mr. President, I move that the Senate return to the consideration of legislative session.

The motion was agreed to, and the Senate resumed legislative session.

ACADEMIES AGREE TO HONOR GRANTS-IN-AID

Mr. LONG of Louisiana. Mr. President, yesterday I informed the Senate of an agreement released by the Superintendents of the Military, Naval, and Air Force Academies. This agreement states, in effect, that it is their intention in the future to honor letters of intent and grant-in-aid contracts which young athletes have signed with other institutions.

I am pleased that such an agreement has been issued. As I have stated, it has been my feeling that the practice of encouraging a young man to violate a contract is hardly in accord with the stated purposes and ideals of the Academies. Incidents such as the one which recently attained some publicity with regard to two young men from South Carolina do the Academies and the services no credit whatever.

Both the junior Senator from South Carolina [Mr. THURMOND] and I have tried to point out the inconsistency of this sort of thing with a motto like the one the Military Academy professes.

It seems to me that the entire operation revolving around appointments to the Academies is in need of a close look, if not an actual overhaul. However, it is gratifying to see that the Superintendents at the Academies are also concerned with some of the problems which have been raised.

Mr. President, I ask unanimous consent that a release describing the agreement reached by the Superintendents be printed in the RECORD.

Sept 29, 1962

24. LEGISLATIVE PROGRAM. Sen. Mansfield stated that the foreign aid appropriation bill will be considered next Mon., Oct. 1, following by consideration of the State-Justice-Commerce appropriation bill, the public works appropriation bill, and the roads bill, and that the conference report on the tax bill will probably be considered Wed., and the supplemental appropriation bill will probably be considered on Thurs. pp. 20011-3

SENATE - Sept. 29

25. PUBLIC WORKS APPROPRIATION BILL, 1963. Began debate on this bill, H. R. 12900. pp. 20114, 20115, 20118-43, 20149, 20156, 20168-237
26. STATE-COMMERCE-JUDICIARY APPROPRIATION BILL, 1963. Sen. Smathers submitted notice that he will move to suspend the rules on this bill, H. R. 12580, for the purpose of proposing amendments to it. pp. 20102-9
27. FOREIGN AID APPROPRIATION BILL, 1963. Sens. Smathers and Hayden submitted notices that they will move to suspend the rules on this bill, H. R. 13175, for the purpose of proposing amendments to it. p. 20109
28. WATER POLLUTION. The Judiciary Committee reported without amendment H. R. 10617, providing that the U. S. district courts shall have jurisdiction of certain cases involving pollution of interstate river systems, and providing for the venue thereof (S. Rept. 2211). p. 20102
29. EDUCATION. The Labor and Public Welfare Committee reported with amendment S. 3477, to promote the security and welfare of the people of the U. S. by providing for a program to assist the several states in further developing their programs of general university extension education (S. Rept. 2204). p. 20102
30. PERSONNEL. The Judiciary Committee reported with amendments H. R. 8140, to strengthen the criminal laws relating to bribery, graft, and conflicts of interest (S. Rept. 2213). p. 20102
- Passed without amendment H. R. 10652, to amend the Administrative Expenses Act of 1946 to provide a more reasonable allowance for transportation of house trailers or mobile dwellings by certain governmental officers and employees upon their transfer from one official station to another so as to provide that the employee may be reimbursed the actual cost of moving the trailer if it is moved by a commercial firm or his agency contracts to move it. This bill will now be sent to the President. p. 20153
31. MINERALS. Passed as reported H. R. 11049, to provide for the relief of certain oil and gas lessees under the Mineral Leasing Act. pp. 20149-51
32. SURPLUS PROPERTY. Passed without amendment H. R. 11378, to amend the Federal Property and Administrative Services Act of 1949 so as to permit donations of surplus property to schools for the mentally retarded, schools for the physically handicapped, educational television stations, and public libraries. This bill will now be sent to the President. pp. 20153-4
33. ADJOURNED until Mon. Oct. 1. p. 20237

forestry research by providing grants and other assistance for forestry research to land-grant colleges and universities or agricultural experiment stations, was passed as reported on Sept. 25, and passed the bill without amendment. (pp. 20021-3) This bill will now be sent to the President. Rejected the committee amendments which would have made all colleges and universities offering graduate training in the sciences basic to forestry and having forestry schools eligible for grants under the bill without regard to whether they are State supported. (p. 20023)

13. STATE, JUSTICE, COMMERCE, JUDICIARY, AND RELATED AGENCIES APPROPRIATION BILL, 1963. A subcommittee of the Appropriations Committee approved for full committee consideration with amendments this bill, H. R. 12580. p. D907
14. BUDGETING. The Government Operations Committee reported without amendment H.R. 10613, to repeal subsection (d) of Sec. 16 of the Administrative Expenses Act of 1946 which requires detailed budget estimates for appropriations to be used for purchase or hire of passenger motor vehicles or for purchase, maintenance, or operation of aircraft (S. Rept. 2184). p. 19997
15. PERSONNEL. The Government Operations Committee reported without amendment H.R. 10652, to provide a more reasonable allowance for transportation of house trailers or mobile dwellings by certain governmental officers and employees upon their transfer from one official station to another (S. Rept. 2185). p. 19997
Agreed to the conference report on H. R. 12180, to extend until July 1, 1964, the existing provisions of law permitting the free importation of personal and household effects brought into the U. S. under Government orders. This bill will now be sent to the President. p. 20082
16. MINERALS. The Interior and Insular Affairs Committee reported with amendments S. 1696, to authorize the Secretary of the Interior to conduct a survey of federally-owned lands for the purpose of locating strategic minerals (S. Rept. 2188). p. 19997
17. D. C. APPROPRIATION BILL, 1963. Passed as reported this bill, H. R. 12276. Conferees were appointed. pp. 20025-78
18. DRUGS. Conferees were appointed on S. 1552, the proposed Drug Industry Act of 1962. House conferees have already been appointed. pp. 20078-82
19. WILDERNESS PRESERVATION. Sen. Humphrey defended the wilderness preservation bill as passed by the Senate and urged the House to take action on the measure this session of Congress. pp. 20097-9
20. RECLAMATION. Concurred in the House amendments to S. 1060, to authorize the construction of the Oroville-Tonasket unit of the Okanogan-Similkameen division, Chief Joseph Dam project, Wash. This bill will now be sent to the President. pp. 20085-6
21. ELECTRIFICATION. Sen. Jackson defended the provisions of S. 3153, to define the primary marketing area of the Bonneville Power Administration, as passed by the Senate Aug. 8. pp. 20086-8
22. PEACE CORPS. Sen. Humphrey commended the work of the Peace Corps on its first anniversary. pp. 20094-7
23. FOREIGN AID. The Rules and Administration Committee reported a resolution authorizing the printing as a Senate document a study, "United States Private

STRENGTHENING THE CRIMINAL LAWS RELATING TO BRIBERY, GRAFT, AND CONFLICTS OF INTEREST, AND FOR OTHER PURPOSES

SEPTEMBER 29, 1962.—Ordered to be printed

Mr. HRUSKA) for Mr. EASTLAND), from the Committee on the
Judiciary, submitted the following

R E P O R T

together with

INDIVIDUAL VIEWS

[To accompany H.R. 8140]

The Committee on the Judiciary, to which was referred the bill (H.R. 8140) to strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes, having considered the same, reports favorably thereon, with amendments, and recommends that the bill as amended do pass.

AMENDMENTS

Amendment No. 1: On page 2 of the chapter analysis under "Sec. 206" strike the words "Exemption of retired officers of the Armed Forces" and insert in lieu thereof the words "Exemption of retired officers of the Uniformed Services".

Amendment No. 2: On page 2, line 9, after the word "thereof," insert the words "including the District of Columbia."

Amendment No. 3: On page 7, line 13, after the word "executive" insert the words "or legislative".

Amendment No. 4: On page 7, line 20, change the period after the word "basis" to a comma and insert the following:

or a part-time United States Commissioner. Notwithstanding the next preceding sentence, every person serving as a part-time local representative of a Member of Congress in the Member's home district or state shall be classified as a special Government employee.

Amendment No. 5: On page 8, line 4, after the word "is" insert the word "voluntarily".

Amendment No. 6: On page 8, line 8, after the figure "218." insert the following new sentence:

A Reserve Officer of the Armed Forces or an officer of the National Guard of the United States who is serving involuntarily shall be classified as a special Government employee.

Amendment No. 7: On page 8, line 12, strike the figures "203, 205," and insert in lieu thereof the figure "205".

Amendment No. 8: On page 10, line 5, after the word "matter" insert the words "involving a specific party or parties".

Amendment No. 9: On page 10, lines 10 and 11, strike the words "which is or within two years has been a subject of his official responsibility, or (3)".

Amendment No. 10: On page 10, line 13, strike the figure "(3)" and insert in lieu thereof "(2)".

Amendment No. 11: On page 10, line 14, after the word "who" strike all down to and including the word "days" on line 16, and insert in lieu thereof the following:

has served in such department or agency no more than sixty days during the immediately preceding period of three hundred and sixty-five consecutive days.

Amendment No. 12: On page 12, line 3, after the word "matter" insert the words "involving a specific party or parties".

Amendment No. 13: On page 12, line 7, following the figure "(2)" strike the words "which is or within two years has been a subject of his official responsibility, or (3)".

Amendment No. 14: On page 12, line 10, strike the figure "(3)" and insert in lieu thereof "(2)".

Amendment No. 15: On page 12, strike lines 12 and 13 and insert in lieu thereof the following:

has served in such department or agency no more than sixty days during the immediately preceding period of three hundred and sixty-five consecutive days.

Amendment No. 16: On page 12, line 14, strike beginning with the word "from" down to and including line 19, and insert in lieu thereof the following:

if not inconsistent with the faithful performance of his duties, from acting without compensation as agent or attorney for any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings.

Amendment No. 17: On page 12, line 23, strike the words "or otherwise aiding or assisting".

Amendment No. 18: On page 12, line 24, after the word "whom" insert a comma and the following "or for any estate for which,"

Amendment No. 19: On page 13, strike lines 8 through 14 inclusive, and insert in lieu thereof the following:

Nothing herein or in section 203 prevents a special Government employee from acting as agent or attorney for another

person in the performance or work under a grant by, or a contract with or for the benefit of, the United States provided that the head of the department or agency concerned with the grant or contract shall certify in writing that the national interest so requires.

Amendment No. 20: On page 13, line 20, strike the words "Armed Forces" and insert in lieu thereof the words "Uniformed Services".

Amendment No. 21: On page 13, line 22, strike the words "Armed Forces" and insert in lieu thereof the words "Uniformed Services".

Amendment No. 22: On page 14, line 13, after the word "matter" insert the words "involving a specific party or parties".

Amendment No. 23: On page 14, lines 19 and 20, strike the words "two years" and insert in lieu thereof the words "one year".

Amendment No. 24: On page 14, line 20, strike the word "last".

Amendment No. 25: On page 15, line 1, after the word "matter" insert the words "involving a specific party or parties".

Amendment No. 26: On page 15, line 4, strike the words "two years" and insert in lieu thereof the words "one year".

Amendment No. 27: On page 15, line 5, strike the words "his employment—" and insert in lieu thereof the words "such responsibility—".

Amendment No. 28: On page 15, line 7, change the period to a colon and add the following:

Provided, That nothing in subsection (a) or (b) prevents a former officer or employee, including a former special Government employee, with outstanding scientific or technological qualifications from acting as attorney or agent or appearing personally in connection with a particular matter in a scientific or technological field if the head of the department or agency concerned with the matter shall make a certification in writing, published in the Federal Register, that the national interest would be served by such action or appearance by the former officer or employee.

Amendment No. 29: On page 15, strike lines 8 through 17 inclusive.

Amendment No. 30: On page 15, line 18, strike "(d)" and insert in lieu thereof "(c)".

Amendment No. 31: On page 16, line 18, strike "subsections (c) and (d)" and insert in lieu thereof "subsection (c)".

Amendment No. 32: On page 17, line 3, strike the words "Government action, proceeding," and insert in lieu thereof the following: "judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest,".

Amendment No. 33: On page 17, line 4, after the word "spouse," insert the word "minor".

Amendment No. 34: On page 17, line 5, strike the word "business".

Amendment No. 35: On page 17, line 15, strike the words "action, proceeding," and insert in lieu thereof the following: "judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest,".

PURPOSE OF AMENDMENTS

The purpose of the amendments is to correct typographical errors, and conform and clarify language in the bill, to incorporate suggested amendments proposed by the Department of Justice during the course of the public hearing on this proposal, and to incorporate language adopted by the committee affecting part-time U.S. commissioners and part-time legislative employees in the home districts and States of Members of Congress.

PURPOSE

This legislation is concerned with two subjects, conflicts of interest and bribery, and would revise the current criminal statutes dealing with these subjects.

Insofar as the conflict-of-interest laws are concerned, the bill has two purposes. First, it would simplify and strengthen the conflict laws presently in effect. Second, in the interest of facilitating the Government's recruitment of persons with specialized knowledge and skills for service on a part-time basis, it would limit the impact of those laws on the persons so employed without depriving the Government of protection against unethical conduct on their part.

A secondary feature of the bill is the substitution of a single comprehensive section of the Criminal Code for a number of existing statutes concerned with bribery. This consolidation would make no significant changes of substance and, more particularly, would not restrict the broad scope of the present bribery statutes as construed by the courts.

LEGISLATIVE HISTORY

On April 27, 1961, the President transmitted to the Congress a special message dealing with conflicts of interest and ethical behavior on the part of persons serving in the departments and agencies of the Government. Accompanying the message was a proposed bill to revise the conflict-of-interest laws which was later introduced as H.R. 7139. Two identical bills, H.R. 3411 and H.R. 3412, introduced by the chairman and the ranking minority member of the House Committee on the Judiciary, and H.R. 3050, a bill drafted by the Association of the Bar of the City of New York, also proposed significant changes in the conflict of interest laws. H.R. 3411 and H.R. 3412, in addition, contained provisions designed to consolidate the bribery laws. Hearings on the four bills were held June 1 and 2, 1961, by the Antitrust Subcommittee of the House Committee on the Judiciary. The subcommittee subsequently combined various features of these bills into a new bill, H.R. 8140, which received the support of the administration, the Association of the Bar of the City of New York, and other groups. Following approval by the full committee, H.R. 8140 passed the House on August 7, 1961.

This committee held hearings on the bill on June 21, 1962. Although the committee received a number of recommendations for amendment, all witnesses agreed with the objectives of the bill and unhesitatingly supported its enactment.

STATEMENT

The necessity for maintaining high ethical standards of behavior in the Government becomes greater as its activities become more

complex and bring it into closer and closer contact with the private sector of the Nation's economy. The best means of assuring high standards have been a matter of increasing concern in recent years, as evidenced by the work of various committees of the Congress, the executive branch, members of the bar, and others. All of these groups have found that the present laws, while correct in principle, are confusing and inadequate and to a considerable degree are actually a hindrance to the Government. This committee has come to the same conclusion. The consensus of views in this connection is reflected in the following passage from the President's special message of April 21, 1961:

Five of these statutes were enacted before 1873. Each was enacted without coordination with any of the others. No two of them use uniform terminology. All but one impose criminal penalties. There is both overlap and inconsistency. Every study of these laws has concluded that, while sound in principle, they are grossly deficient in form and substance.

The fundamental defect of these statutes as presently written is that: On the one hand, they permit an astonishing range of private interests and activities by public officials which are wholly incompatible with the duties of public office; on the other hand, they create wholly unnecessary obstacles to recruiting qualified people for government service. This latter deficiency is particularly serious in the case of consultants and other temporary employees, and has been repeatedly recognized by Congress in its enactment of special exemption statutes.

A serious defect of the statutes arises from the fact that, as construed in *United States v. Bergson* (119 F. Supp. 459 (D.C.D.C., 1954)), they prevent improper activities by present and former Government employees in connection with claims to money or property but do not protect the Government against the same kind of activities when directed to proceedings which are not technically for money or property. Yet the dangers of abuse of Government position and of the unconscionable use of inside information against the Government by a present or former employee are, of course, as great in an administrative or judicial proceeding for the award of a valuable license or other privilege as in a proceeding to obtain the payment of money.

An example of overprotection of the Government's interest, as contrasted with the underprotection just described, is found in title 5, United States Code, section 99, a statute applying to a former employee of an executive department. It prevents him for 2 years after the end of his employment with that department from prosecuting a claim which was pending, during the period of his incumbency, either in that or in any other department, even though he was totally unaware of the claim during that period. Whatever the merit of this prohibition at a time when the Government departments were fewer in number and much smaller in size, it makes very little sense today. Thus, it is hard to advance a reasonable justification for precluding a former Commerce Department attorney, for 2 years or for any length of time, from representing before the Treasury Department a private client who has a claim for an income tax refund with

which the attorney never had any connection while in Government service.

In considering the application of present law in relation to the Government's utilization of temporary or intermittent consultants and advisers, it must be emphasized that most of the existing conflict-of-interest statutes were enacted in the 19th century—that is, at a time when persons outside the Government rarely served it in this way. The laws were therefore directed at activities of regular Government employees, and their present impact on the occasionally needed experts—those whose main work is performed outside the Government—is unduly severe. This harsh impact constitutes an appreciable deterrent to the Government's obtaining needed part-time services.

The problem was well stated by the Senate Government Operations Subcommittee on National Policy Machinery in a study dated February 28, 1961, and entitled "Organizing for National Security—the Private Citizen and the National Service":

The heart of the difficulty lies in the failure of present-day law to recognize the special problems of the occasional consultant. * * *

To be sure, consultancies can in certain conditions be abused by those who would pursue private gain or seek to exert covert and wrongful influence on Government policies. The law and administrative regulations should effectively guard against such abuses. Indeed, we require more precise and sophisticated safeguards than exist presently.

But the statutes should be refined to deal with the real danger. The intermittent consultant should not be arbitrarily and indiscriminately swept under a network of outdated general restraints serving only to deny the Government the expert assistance it needs in modern conditions.

An Advisory Panel on Ethics and Conflict of Interest in Government, appointed by the President in January 1961, also considered the problem. This panel, composed of retired Judge Calvert Magruder, of the U.S. Court of Appeals for the First Circuit; Dean Jefferson B. Fordham, of the University of Pennsylvania Law School, and Prof. Bayless Manning, of the Yale Law School, made the following statement in its report, dated March 21, 1961:

In the present context one of the most significant developments in the Federal personnel system is the great and growing resort to temporary and intermittent personnel. The tremendous range and volume of governmental activities, much of which stems from technological developments and international problems, have brought government into intimate relationship with the economic life of the Nation and with social welfare, with the result that there are no longer clear boundaries between the private and the public sectors. This means, for one thing, that the National Government has major demands for qualified personnel of the sort needed by business organizations and other private institutions. What the Government must do is compete as best it can for the needed people. Thus, it is readily understandable that in many areas of activity the Government has to make use

of people on a limited basis in the capacity of advisers, consultants, or experts. Nor is it likely that the occasion for this practice will lessen. Use of such semiemployees, partly in and partly outside Government, greatly complicates the problem of maintaining ethical standards in the Government for it inevitably multiplies the risks of conflicting interests.

At this date it is no longer open to question that many, if not most, of the departments and agencies find it necessary for the optimum performance of their tasks to make use of the skill, talent, and experience of leaders in the sciences, business, and the professions whose regular work is conducted in private spheres. Today's Government requires the part-time services of thousands of such persons to deal with problems of increasing complexity and scope. It can scarcely be questioned that a satisfactory means must be found of facilitating the employment of these individuals by the departments and agencies, as needed, without relaxing basic ethical standards or permitting actual conflicts of interest.

Congress has on a number of occasions recognized the obstacles faced by an agency requiring the part-time services of consultants and advisers and has granted the persons employed by the agency in that capacity a specified statutory exemption from some or all of the conflict laws. This hit-or-miss practice has produced unjustified inconsistencies and in some cases has resulted in the grant of unduly broad exemptions. Needless to say, general legislation doing away with the need for special treatment is a preferable course of action.

H.R. 8140 is intended to remedy the deficiencies and difficulties discussed above. It is the end result of protracted and careful studies both in and out of government, and this committee is of the view that it will achieve the goal set for it. In so doing, it will promote and balance the dual objectives of protecting government integrity and facilitating the Government's recruitment and retention of needed personnel.

SECTION-BY-SECTION ANALYSIS

Section 1(a) of the bill would amend chapter 11 of title 18, United States Code, by combining into a new section 201 the substance of the present sections 201 through 213 relating to bribery and graft. In addition section 1(a) of the bill would replace the present sections 281, 282, 283, 284, 434, and 1914 of title 18, all relating to conflicts of interest, with new sections 202 through 209. The renumbering and repeal of sections necessitated by the provisions of section 1(a) are accomplished by section 1 (b), (c), and (d) and by section 2.

The following references to sections 201 through 209 and section 218 refer to the proposed new sections of title 18 of which would be enacted by section 1 (a) and (e) of the bill.

Section 201. Bribery of public officials and witnesses

The current bribery laws in title 18, United States Code, sections 201-213 consist of separate sections applicable to various categories of persons—Government employees, Members of Congress, judges, and others. Section 201 would bring all these categories within the purview of one section and make uniform the proscribed acts of bribery, as well as the intent or purpose making them unlawful.

Subsection (a) contains definitions for the purposes of the new section 201 only. The term "public official" is broadly defined to

include officers and employees of the three branches of government, jurors, and other persons carrying on activities for or on behalf of the Government. The definition of "person who has been selected to be a public official" is self-explanatory. The term "official act" is defined to include any decision or action taken by a public official in his capacity as such.

Subsection (b) makes it unlawful for anyone to bribe or attempt to bribe a public official by corruptly giving, offering, or promising him or any person selected by him, anything of value with intent to influence any official act by him, to influence him to commit or allow any fraud on the United States, or to induce him to do or omit to do any act in violation of his lawful duty. The three alternate intents specified in the subsection are in substance the same as those now prescribed in title 18, United States Code, section 201. The subsection expands present law to a degree in its provisions forbidding an offer or promise of something of value from which a public official himself will not benefit but which will be of advantage to another person in whose well-being he is interested.

Subsection (c) prohibits a public official's solicitation or acceptance of, or agreement to take, a bribe. The same alternate intents are set forth here as in subsection (b).

Subsections (d) and (e) prohibit the offering to or the acceptance by a witness of anything of value involving intent to influence his testimony at a trial, congressional hearing, or agency proceeding.

The maximum penalties authorized for convictions under these four subsections are a fine of \$20,000 or triple the monetary equivalent of the thing of value, whichever is greater, or imprisonment for 15 years, or both. In addition a violator may be disqualified, in the discretion of the court, from holding any office under the United States. Title 18, United States Code, section 206 presently makes such disqualification mandatory in cases of conviction for offers of bribes to judges, jurors, or judicial officers and title 18, United States Code, sections 202, 205, and 207 require it in cases of convictions for acceptance of bribes by Government employees, Members of Congress, and judges.

Subsections (f) and (g) forbid offers or payments to, and solicitations or receipt by, a public official of anything of value "for or because of" any official act performed or to be performed by him. Subsections (h) and (i) similarly forbid offers or payments to, and solicitations or receipt by, a witness of anything of value "for or because of" testimony given or to be given by him.

The maximum punishment for a conviction under subsection (f), (g), (h), or (i) is a fine of \$10,000, or imprisonment for 2 years, or both.

Subsection (j) specifies that nothing in subsection (d), (e), (h), or (i) is to prevent the payment or receipt of lawful witness fees, travel and subsistence expenses, or reasonable compensation for expert testimony.

Subsection (k) specifies that the provisions of the section are not to supersede the present statutes making it unlawful to obstruct justice by intimidating or influencing jurors or witnesses.

Section 202. Definitions

This section contains two definitions applicable to the conflict of interest provisions to follow. The first definition, that of "special Government employee," serves to establish a category of intermittent

and temporary personnel, as distinguished from regular, full-time personnel. The term is defined to include officers and employees of the executive and legislative branches, independent agencies, and the District of Columbia who are employed, with or without compensation, to perform temporary duties, either on a full-time or intermittent basis, for not more than 130 days in any period of 365 consecutive days. In general, as will be seen hereinafter, the prohibitions of the bill relating to special Government employees are less extensive than in the case of regular employees. Although H.R. 8140, as it passed the House, did not make employees of the legislative branch eligible for classification as special Government employees, this committee sees no reason for omitting them and has amended section 202 accordingly.

In addition the committee has amended the section to classify a part-time home representative of a Member of Congress as a special Government employee even though his service exceeds the 130-day standard. Part-time local representatives, though generally rendering fairly frequent service, rarely spend more than a small part of any day on business of the Member they assist, and it would be unfair and unrealistic to treat them as regular, full-time employees if they exceed that standard.

The provisions of H.R. 8140, like the provisions of the present conflict of interest laws, apply in general to officers of the Armed Forces on active duty. Section 202 provides that a Reserve or National Guard officer on a tour of active duty solely for training shall be classified as a special Government employee. As it passed the House, section 202 also provides that every Reserve or National Guard officer who is serving a period of extended active duty in excess of 130 days shall be classified as an officer subject to the full impact of the bill rather than as a special Government employee. No distinction is made between Reserve and National Guard officers who are serving pursuant to an involuntary recall to duty and those who are serving voluntarily. This committee is of the opinion that it is not equitable and may cause unjustified hardship to subject the former to all the prohibitions applicable to the general run of officers and employees of the Government. Accordingly, the committee has amended section 202 to classify an involuntarily recalled Reserve or National Guard officer as a special Government employee during the whole of his period of involuntary service—that is, even if it extends beyond 130 days.

Enlisted members of the Armed Forces are specifically excluded by section 202 from the coverage of the conflict of interest statutes.

Finally, section 202 defines the term "official responsibility" as the direct administrative or operating authority to approve, disapprove, or otherwise direct Government action.

Section 203. Compensation to Members of Congress, officers, and others in matters affecting the Government

This section is proposed as a substitute for title 18, United States Code, section 281, which prohibits Members of Congress and officers or employees of the Government from receiving compensation for services rendered for others before a Federal department or agency in matters in which the Government is a party or is interested. Section 203 of the bill continues this restraint in full effect except with

respect to special Government employees. Subsection (c) makes the prohibition applicable to those individuals only in relation to (1) matters in which they have at any time participated personally and substantially in their governmental capacities or (2) matters pending in the department or agency in which they serve. However, the second restriction would not apply in the case of a special Government employee who has served in such department or agency no more than 60 days during the preceding period of 365 days.

The House bill set 15 days' service in a year as the maximum which would leave the bar of the second restriction at rest. The committee recognizes that an intermittent or temporary consultant or adviser may attain a considerable degree of influence in an agency he serves and that the second restriction is a reasonable one in principle. However, the 15-day limit seems much too short and no doubt would often make unavailable to an agency the needed services of an individual with specialized knowledge or skills who must appear before that agency in other connections in his private capacity. The 60-day standard set by the committee seems a more reasonable one, particularly when it is borne in mind that the first restriction applicable to special Government employees continues in effect in any event. It will, of course, remain incumbent on each agency to make certain that persons serving it part time who also appear on behalf of outside organizations do not abuse their access to the agency for the benefit of those organizations.

The House bill contains a provision in subsection (c) of section 203 subjecting a special Government employee to the prohibition of the section in relation to a matter which is, or within 2 years has been, a subject of his official responsibility. This provision also seems to be directed at the improper use of influence. As a practical matter, however, the problem of influence would seem to be dealt with best in the manner indicated in the next preceding paragraph—that is, by agency watchfulness and regulation. And, with the unceasing application of the above-mentioned first restriction preventing private appearances by a special Government employee in relation to matters he has worked on for the Government, it seems clear that the Government is well protected. Taking into account also the likelihood that the additional House restriction might well be an impediment to recruitment, the committee has omitted it.

Section 203 provides the same penalties as title 18, United States Code, section 281: a maximum fine of \$10,000 or maximum imprisonment for 2 years or both, and mandatory disqualification for holding any office under the United States.

Section 204. Practice in Court of Claims by Members of Congress

This section in substance repeats the provisions of the present title 18, United States Code, section 282 precluding Members of Congress from practice in the Court of Claims.

Section 205. Activities of officers and employees in claims against and other matters affecting the Government

Section 205 is the counterpart of the current title 18, United States Code, section 283 which prevents officers or employees of the departments, agencies, Senate and House of Representatives (but not Members of Congress) from acting as agent or attorney for, or aiding or assisting in, the prosecution of any claim against the United

States otherwise than in the proper discharge of their official duties. As pointed out above, the term "claim against the United States" has been limited by the decision in the case of *United States v. Bergson* so as to include only proceedings against the Government which seek money or property. Section 205 of the bill explicitly goes beyond this restricted class of proceedings and extends its bar against a Government employee's private representational activities to all matters in which the United States is a party or has an interest. Thus the section includes within its scope applications for licenses or other privileges, criminal proceedings, and other important matters not now covered.

Section 205 treats special Government employees in the same manner as section 203 of the bill. More precisely, a person in that category is subject to the restraints of section 205 only in regard to matters in which he has participated personally and substantially in a governmental capacity and, if his service in his agency has aggregated more than 60 days in the year past, matters pending before that agency.

Section 205 contains a provision lifting its bar in the case of a Government employee who represents another, without compensation, in a disciplinary, loyalty, or other personnel administration proceeding. The section also makes it possible for an individual in Government service, with his superior's approval, to represent, with or without compensation, his parents, spouse, child, or a person for whom he acts as fiduciary. However, this permission does not extend to representing such persons in matters in which the individual has participated personally and substantially as a Government employee or which are the subject of his official responsibility.

Section 205 also contains a provision authorizing a special Government employee to act as agent or attorney for another in the performance of work under a contract with or for the benefit of the United States if the head of the agency concerned with the contract certifies in writing, published in the Federal Register, that the national interest so requires. This narrow authority is given to take care of any situations involving the national interest where an intermittent employee's special knowledge or skills may be required by his employer or other private person to effect the proper performance of a Government contract but where his services may be unavailable in the absence of a waiver of section 205.

Section 205 contains a declaration that it does not prevent an officer or employee from giving testimony under oath or making required official statements.

The Judicial Conference of the United States has recommended to the committee that part-time U.S. commissioners be exempted from the comprehensive coverage of section 205. The Conference believes that the office of Commissioner can best be filled by a lawyer and has consistently encouraged the appointment of lawyers. As of May 16, 1962, there were 692 commissioners, of whom 469 were practicing attorneys. All but a very few of these attorneys perform services on a part-time basis and the Conference believes the continuation of their services is important to the fair administration of the criminal laws of the Federal Government.

As noted by the Conference, U.S. commissioners are not among those who may be classified as special Government employees under section 202 of the bill as it came before the committee, with the con-

sequence that section 205 would foreclose attorneys who are part-time commissioners from engaging in the field of Federal practice. It should be added that section 203 would have virtually the same effect. The end result under these circumstances would no doubt be that many, if not most, of the attorneys would resign to the detriment of the administration of justice.

The committee concurs in the view of the Judicial Conference that part-time commissioners should not be left within the full coverage of section 205—or of section 203. It believes the best solution is to treat all such commissioners as special Government employees. The committee has therefore amended the definition of special Government employees in section 202 to achieve that result.

The penalties of section 205 are a maximum fine of \$10,000, or maximum imprisonment for 2 years, or both.

Section 206. Exemption of retired officers of the uniformed services

This section provides that sections 203 and 205 of the bill do not apply to a retired officer of the uniformed services or to any person specially excepted by Congress. It should be noted at this point that section 2 of the bill repeals title 18, United States Code, sections 281 and 283, except as those statutes may apply to retired officers. Thus the net result of section 206 and this partial repeal is to leave the present status of retired officers under title 18, United States Code, sections 281 and 283 unchanged.

Section 207. Disqualification of former officers and employees in matters connected with former duties or official responsibilities; disqualification of partners

Section 207 replaces title 18, United States Code, section 284 dealing with postemployment activities. The latter prohibits a former employee of the Government, for a 2-year period following the termination of his employment, from prosecuting a claim against the United States involving any subject matter directly connected with which he was employed. Here again the term "claim against the United States" is subject to the limitation of the *Bergson* decision.

Subsection (a) of section 207 provides that a former Government officer or employee, including a former special Government employee, shall be permanently barred from acting as attorney or agent for anyone other than the United States in any matter in which the United States is a party or is interested and in which he participated personally and substantially in a governmental capacity. Thus, in addition to replacing the present 2-year disqualification with a lifetime bar, section 207(a) strengthens present law by going beyond claims for money or property to the whole range of matters in which the Government has an interest.

Subsection (b) bars a former employee of an agency, for a period of 1 year after his employment with it has ceased, from appearing as agent or attorney for another person before any court or agency in connection with a matter in which the Government has an interest and which was within the area of his official responsibility at this agency at any time within 1 year prior to the end of such responsibility. The prohibition would thus cover cases where the former employee had actually not participated in a matter while in the Government. As subsection (b) appears in the House bill, each of the time factors is set at a period of 2 years.

The committee received testimony at its hearings on the bill recommending the complete omission of the subsection on the ground that it would certainly and adversely affect recruitment by the scientific agencies of the Government of topflight personnel for regular service, especially in higher ranking supervisory positions, and their recruitment of intermittent personnel for work in broad areas of agency endeavor. The committee recognizes the possibility that this result might ensue but it believes there is also a distinct possibility of harm to the Government when a supervisory employee may sever his connection with it one day and come back the next seeking an advantage for a private interest in the very area where he has just had supervisory functions. Striking a balance between the two possibilities, the committee has reduced the 2-year periods in the House bill to periods of 1 year. In addition, in order to make sure that a scientific agency is not cut off from the benefits which may accrue in an important situation from permitting the appearance of a former employee with outstanding scientific qualifications, the committee has added a proviso permitting such appearance, despite the provisions of subsection (a) or (b), upon an agency certification, published in the Federal Register, that the national interest would be served thereby.

Subsection (c) prohibits a partner of a person employed by the Government, including a special Government employee, from acting as agent or attorney for anyone other than the United States in matters in which the employee participates or has participated personally and substantially for the Government or which are the subject of his official responsibility.

Section 207 of the House bill includes a provision which would prevent a partner of a former Government employee, for a period of 2 years following the termination of the latter's employment, from engaging in any activities before the Government from which such former employee is barred. This prohibition, which seems to be applicable primarily to lawyers, is no doubt based on the imputation of a disqualification from one partner to another. It is to be contrasted with the prohibition in subsection (c) which covers the much more serious situation where an individual outside the Government is in a position to benefit from improper action by a partner currently in Government service. The committee considers that the additional provision included by the House falls principally within the field of legal ethics, where the present Canons of Ethics would seem to give adequate coverage. Thus the committee does not believe the provision should be included within a criminal statute and has omitted it.

The maximum penalties provided for violations of section 207 of the bill are a fine of \$5,000 or imprisonment for 1 year, or both.

Section 208. Acts affecting a personal financial interest

Subsection (a) is modeled on title 18, United States Code, section 434 which disqualifies an employee of the Government who has an interest in the profits or contracts of a business entity from the transaction of business with such entity. However, subsection (a) improves upon the present law by abandoning the limiting concept of the "transaction of business." The disqualification of the subsection embraces any participation on behalf of the Government in a matter in which the employee has an outside financial interest, even though his participation does not involve the transaction of business. Section

208 also reaches further than present law by requiring the disqualification of an employee from participation in matters in which his spouse, child, or persons with whom he has business connections have an interest. The bill, as it came before the committee, makes no distinction between minor children and those who have attained a majority. The committee believes that only the interest of a minor child should serve to disqualify the employee and has amended section 208(a) accordingly.

Subsection (a) at one point speaks in terms of an employee's disqualifying connection with a "business organization," thus leaving open the implication that he would remain eligible to act for the Government in a matter involving a nonprofit organization with which he is connected. A great number of universities, foundations, nonprofit research entities, and other similar organizations today are engaged in work for the Government. Conflicts of interest may arise in relation to them just as in the case of the ordinary business for profit. The committee therefore has deleted the word "business" from the subsection to make clear that improper dealing by a Government employee in connection with nonprofit organizations is also prescribed.

Subsection (b) adopts a de minimis rule authorizing an agency waiver of an employee's disqualifying interest of insignificant proportions either on an ad hoc basis or pursuant to a general agency regulation.

Section 208 establishes maximum penalties for its violation of a \$10,000 fine, imprisonment for 2 years, or both.

Section 209. Salary of Government officials and employees payable only by United States

Section 209 is similar to title 18, United States Code, section 1914. The latter prohibits a Government employee from receiving any salary in connection with his Government services from a private source. Subsection (a) of section 209 would reenact this prohibition in substance and, in addition, would make it an offense for anyone to make a payment to a Government employee the receipt of which would violate the section.

The present statute's ban on the receipt of private payments "in connection with" an employee's Government services is replaced in section 209(a) with a ban on the receipt of such payments "as compensation for" such services. The new language is more precise in expressing what is clearly intended by the present broad phrase.

Subsection (b) is a declaration that a Government employee covered by subsection (a) is not thereby prevented from continuing to participate in a bona fide pension or other welfare plan maintained by a former employer.

Subsection (c) exempts special Government employees and employees serving the Government without compensation from the application of subsection (a) and also grants a corresponding exemption to any outside person paying compensation to such individuals.

Subsection (d) specifies that the section does not prohibit the payment or acceptance of sums under the terms of the Government Employees Training Act.

The maximum penalties authorized by section 209 are a fine of \$5,000 or imprisonment for 1 year, or both.

Section 218. Voiding transactions in violation of chapter; recovery by the United States

This section, which has no statutory counterpart at the present time, authorizes the President or, under regulations prescribed by him, a department or agency head, to declare void and rescind any transaction with the United States in relation to which there has been a final conviction under the bribery or conflict-of-interest statutes. The section further specifies that the United States would be entitled to recover, in addition to any penalty prescribed by law or in a contract, the amount expended or the thing transferred or delivered on its behalf, or the reasonable value of such thing. The question has arisen whether this section would operate to modify the Supreme Court decision relating to the Dixon-Yates matter (*United States v. Mississippi Valley Generating Co.*, 364 U.S. 520 (1961)). That result seems to be foreclosed since the opening language of section 218 states that its provisions are "in addition to any other remedies provided by law."

Other provisions of the bill

Section 2 of the bill repeals title 18, United States Code, sections 281, and 283 (except, as noted above, as they apply to retired officers) and title 18, United States Code, sections 282, 284, 434, and 1914. Section 2 also states that these sections of the Criminal Code are to be supplanted by the new sections 203, 204, 205, 207, 208, and 209 as set forth in section 1. Existing exemptions from the sections repealed would be retained as exemptions from the corresponding new sections except to the extent that they affect officers or employees of the executive branch, of any independent agency or of the District of Columbia, as to whom they would no longer be applicable.

Section 3 of the bill repeals title 5, United States Code, section 99, the anachronistic postemployment statute which is discussed earlier herein. Thus there will remain a single statute governing postemployment conduct, the new section 207.

Section 4 specifies that the legislation shall take effect 90 days after the date of its enactment.

In addition to the amendments to the House bill which are described above, the committee has made a number of minor clarifying and perfecting amendments which require no discussion.

The committee is of the opinion that this legislation, as amended by the committee, is a long step forward in strengthening and revising the existing conflict-of-interest laws. At the same time it should give stimulus to the Government's efforts to enlist technical and scientific experts on a temporary basis to aid the national defense effort.

The committee accordingly recommends favorable consideration of H.R. 8140, as amended.

In the opinion of the committee it is necessary to dispense with the requirements of subsection (4) of rule 29 of the Standing Rules of the Senate in order to expedite the business of the Senate.

INDIVIDUAL VIEWS OF SENATOR JOHN A. CARROLL

H.R. 8140 as reported by our committee is a long-needed modernizing, strengthening, and clarifying measure concerning the laws relating to bribery and conflicts of interest.

As chairman of the Subcommittee on Administrative Practice and Procedure I have become acutely aware of some of the problems in this area which have been experienced in the departments and agencies of the Government.

I present these additional views to emphasize that in H.R. 8140 we have created a "special Government employee" for whom the restraints upon regular Government employees have been relaxed under the bill. This was done to permit the Government to be able to bring advisers and consultants in temporarily—a problem which under present law is difficult, as the report indicates.

I wish to emphasize that there will have to be close administrative regulation of this provision. Among the regulations should be current statements of their financial interests, a continuous scrutiny of the role and need for the individual in the agency, and of the appearance of these employees on behalf of non-Government organizations and enterprises.

These individual views of mine are in the nature of a warning and a caution to the executive branch to be more alert and to be more vigilant where we have relaxed this conflict-of-interest provision.

By the same token Congress must exercise greater diligence and alertness to the functions of the executive branch and, may I add, ought to reexamine, from time to time, its own relationships to the provisions of this bill.

There can be no double standard. The high standard of conduct that we in the legislative branch expect of the executive branch must be equally applied to ourselves.

JOHN A. CARROLL.

INDIVIDUAL VIEWS OF SENATOR KENNETH B. KEATING

Enactment of H.R. 8140, as reported by the committee, will serve to clarify, modernize, and, in some respects, strengthen existing conflict-of-interest laws. In my judgment, however, it contains several serious omissions.

Its most important defect is its failure to deal with conflict-of-interest problems affecting Members of Congress. The legislative branch, of course, has special problems, but these do not require an exemption of Congress from the same high ethical standards we intend to impose on the officers and employees of the other branches of the Government. There is no justification for a double standard of morality in Government, one for the Congress and another for the rest of the public service. The public will resent any "holier than thou" attitude on the part of Congress, and properly so.

Conflict-of-interest questions confront the Members of Congress almost daily. For example, should a Representative or Senator vote on matters in which he has some personal financial stake? What are the proper limits on the appointment of relatives to the Member's staff? What kind of outside employment and income are compatible with certain committee assignments? What campaign contributions are properly acceptable and which are not? What are the limits on a Member's representation of constituent interests before the regulatory agencies and other Government departments? Under what circumstances, if any, should Members be permitted to accept fees for speeches to various interest groups?

One of the difficulties now is the absence of any legislative machinery for dealing with these and similar questions. As a result, each Member must act on his own judgment, which, in the light of the pressures on him, may be a very faulty guide to what is right, no matter how good his intentions.

I believe that it would serve the interests of the Members of Congress as well as the public interest if a source of authoritative guidance as to how to deal with such problems were made available.

There are some cases, of course, in which a Member's conduct would be clearly wrong. For example, no Member should be permitted to accept a fee for prosecuting claims against the United States, obtaining Government contracts, or appearing in regulatory agency proceedings. Such obvious misconduct is now a violation of the criminal law and should continue to be treated in this way. But there are many possibilities of conflict of interest which are not so apparent. The criminal law, with its requirements of malice and willfulness, does not offer a practical solution for cases in this shadow-land of conduct.

Early in this Congress I joined in sponsoring legislation proposing a three-step approach to the legislative conflict of interest problem. The three steps were: (1) Creation of a Joint House-Senate Committee on Ethics to investigate and recommend a specific code of ethics for the Congress; (2) adoption of an interim code of ethics which would

be in force during the joint committee's study; and (3) a grant of authority to the Senate Committee on Rules and Administration to give advisory opinions to the Members of the Senate on conflict of interest questions.

I testified in favor of these proposals at a hearing on H.R. 8140 before the Committee on the Judiciary. However, they were not explored extensively, and questions have been raised by those strongly in favor of acting in this field, about the details of the proposed interim code of ethics.

Because of the lateness of the session, apprehension also has been expressed that any attempt to press this proposal as an amendment to the present bill may imperil its chances of passage. I believe that the principal bill is vitally important and has been too long delayed already and, therefore, would be most reluctant to subject it to any such hazards.

At the same time I know of no reason to defer action on the establishment of a Joint House-Senate Committee on Ethics or the enlargement of the authority of the Senate Committee on Rules and Administration. Indeed, the absence of an interim code of ethics makes it more important than ever that these other steps be taken as promptly as possible. It is my intention, therefore, to offer an amendment for these purposes when this bill is before the Senate.

The same is true of another amendment I have offered to require that all ex parte communications from Congressmen relating to agency adjudications be made a matter of public record. There are many circumstances in which it is appropriate for a Member of Congress to communicate in behalf of his constituents with an agency about the status, disposition, or merits of a pending case. However, I can conceive of no circumstances under which it would be proper to do so without some notice to the parties in the agency proceedings. Elemental fairness in agency adjudications requires that all such communication be made a matter of record. In addition, disclosure would be a powerful safeguard against any improper attempts to influence agency decisions in such cases. My proposal would not prohibit contacts by Members of Congress with the administrative agencies, but it would curb abuses in this process by exposing every such contact to the light of day.

The bill reported by the committee contains many of the provisions of legislation which Senator Javits and I joined in sponsoring early in this Congress on the basis of a report of a special committee of the Bar Association of the City of New York after an intensive study of executive conflict of interest problems. Unfortunately, however, H.R. 8140 omits two key provisions of this legislation dealing with administrative enforcement and gifts. In my judgment, amendments should be added to the proposed legislation covering both points.

(1) *Administrative enforcement*

This amendment would authorize agency heads to take whatever disciplinary action was appropriate against those who violated the substantive provisions of the law or any regulations issued thereunder. It would also permit administrative action designed to prevent violations from occurring, such as the filing of reports by officers and employees of the agency and by persons appearing before or dealing with the agency.

These administrative control procedures would not affect the application of criminal penalties in appropriate cases. There are many conflict-of-interest situations, however, in which a large gray area exists. The demanding requirements of guilt beyond a reasonable doubt in criminal cases may make it difficult to prevail in criminal proceedings in cases which definitely warrant civil or administrative sanction.

President Kennedy, in his message to the Congress on April 27, 1962, recognized the need for this dual approach to enforce the conflict-of-interest laws. In that message he said:

Most of the existing laws are criminal statutes. As such, they have been strictly construed and, because of their harshness, infrequently invoked. By granting this added flexibility we help to insure more effective enforcement. In addition, the regulations which are adopted will permit more specific adaptation of the general prohibitions tailored to the activities of particular agencies.

It is clear from the President's message that he recognized a form of administrative enforcement as an important ingredient for conflict-of-interest legislation. I wholeheartedly agree with his views in this regard.

(2) *Gifts*

This amendment is directed to an area in our conflict-of-interest laws where there now exists almost a complete void—gifts to Federal employees. The Billy Sol Estes case is only one of many indicating the seriousness of this omission from the law. Under existing law the acceptance of a gift by a Federal employee may not be illegal even though the employee's agency or department does regular business with the donor. This in my opinion is absurd and should be changed.

Objections were raised at the hearings on H.R. 8140 to the scope of the amendment originally proposed with respect to gifts. In order to avoid as much controversy as possible on this issue, therefore, the amendment will be modified to reflect these objections. As modified, however, it would still prohibit any Government employee from soliciting or accepting any gift from any person where the employee has reason to believe that such person (a) is seeking to obtain contractual or other business or financial relationships with the employee's agency, or (b) conducts operations or activities which are regulated by the employee's agency, or (c) has interests which may be substantially affected by the employee's performance or nonperformance of his official duties. Certainly, such obvious attempts at influence peddling or the purchasing of good will should be prohibited in any meaningful revision of the conflict of interest laws.

In conclusion, I believe a word of commendation should be expressed to the Bar Association of the City of New York and its special committee under the leadership of Roswell B. Perkins for the time and attention they have given this subject. It is now up to the Congress to make certain that they have not labored in vain. Enactment of this measure, with the amendments I have discussed, would be a major step in assuring public confidence in the integrity of government. At the same time, it would remove impediments which now

exist to the recruitment of key personnel. The difficult and challenging tasks facing our Government make it imperative that we take every step necessary to assure its efficient and honest operation. This bill would contribute significantly to that goal and should not be delayed.

KENNETH B. KEATING.

C

Calendar No. 2176

87TH CONGRESS
2^D SESSION

H. R. 8140

[Report No. 2213]

IN THE SENATE OF THE UNITED STATES

AUGUST 8, 1961

Read twice and referred to the Committee on the Judiciary

SEPTEMBER 29, 1962

Reported by Mr. HRUSKA (for Mr. EASTLAND), with amendments

[Omit the part struck through and insert the part printed in *italic*]

AN ACT

To strengthen the criminal laws relating to bribery, graft, and
conflicts of interest, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) so much of chapter 11 of title 18 of the United
4 States Code as precedes section 214 is amended to read as
5 follows:

1 “CHAPTER 11—BRIBERY, GRAFT, AND CONFLICTS

2 OF INTEREST

“Sec.

“201. Bribery of public officials and witnesses.

“202. Definitions.

“203. Compensation of Members of Congress, officers and others, in matters affecting the Government.

“204. Practice in Court of Claims by Members of Congress.

“205. Activities of officers and employees in claims against and other matters affecting the Government.

“206. ~~Exemption of retired officers of the Armed Forces~~ *Exemption of retired officers of the uniformed services.*

“207. Disqualification of former officers and employees in matters connected with former duties or official responsibilities; disqualification of partners.

“208. Acts affecting a personal financial interest.

“209. Salary of Government officials and employees payable only by United States.

“210. Offer to procure appointive public office.

“211. Acceptance or solicitation to obtain appointive public office.

“212. Offer of loan or gratuity to bank examiner.

“213. Acceptance of loan or gratuity by bank examiner.

“214. Offer for procurement of Federal Reserve bank loan and discount of commercial paper.

“215. Receipt of commissions or gifts for procuring loans.

“216. Receipt or charge of commissions or gifts for farm loan, land bank, or small business transactions.

“217. Acceptance of consideration for adjustment of farm indebtedness.

“218. Voiding transactions in violation of chapter; recovery by the United States.

3 “§ 201. Bribery of public officials and witnesses

4 “(a) For the purpose of this section:

5 “‘public official’ means Member of Congress, or
6 Resident Commissioner, either before or after he has
7 qualified, or an officer or employee or person acting for
8 or on behalf of the United States, or any department,
9 agency, or branch of Government thereof, *including the*
10 *District of Columbia*, in any official function, under or by
11 authority of any such department, agency, or branch of
12 Government, or a juror; and

1 “ ‘person who has been selected to be a public offi-
2 cial’ means any person who has been nominated or
3 appointed to be a public official, or has been officially
4 informed that he will be so nominated or appointed; and

5 “ ‘official act’ means any decision or action on any
6 question, matter, cause, suit, proceeding or controversy,
7 which may at any time be pending, or which may by
8 law be brought before any public official, in his official
9 capacity, or in his place of trust or profit.

10 “(b) Whoever, directly or indirectly, corruptly gives,
11 offers or promises anything of value to any public official or
12 person who has been selected to be a public official, or offers
13 or promises any public official or any person who has been
14 selected to be a public official to give anything of value to
15 any other person or entity, with intent—

16 “(1) to influence any official act; or

17 “(2) to influence such public official or person who
18 has been selected to be a public official to commit or aid
19 in committing, or collude in, or allow, any fraud, or
20 make opportunity for the commission of any fraud, on
21 the United States; or

22 “(3) to induce such public official or such person
23 who has been selected to be a public official to do or omit
24 to do any act in violation of his lawful duty, or

25 “(c) Whoever, being a public official or person selected

1 to be a public official, directly or indirectly, corruptly asks,
2 demands, exacts, solicits, seeks, accepts, receives, or agrees
3 to receive anything of value for himself or for any other per-
4 son or entity, in return for:

5 “(1) being influenced in his performance of any
6 official act; or

7 “(2) being influenced to commit or aid in com-
8 mitting, or to collude in, or allow, any fraud, or make
9 opportunity for the commission of any fraud, on the
10 United States; or

11 “(3) being induced to do or omit to do any act in
12 violation of his official duty; or

13 “(d) Whoever, directly or indirectly, corruptly gives,
14 offers, or promises anything of value to any person, or offers
15 or promises such person to give anything of value to any
16 other person or entity, with intent to influence the testimony
17 under oath or affirmation of such first-mentioned person as a
18 witness upon a trial, hearing, or other proceeding, before
19 any court, any committee of either House or both Houses of
20 Congress, or any agency, commission, or officer authorized
21 by the laws of the United States to hear evidence or take
22 testimony, or with intent to influence such person to absent
23 himself therefrom; or

24 “(e) Whoever, directly or indirectly, corruptly asks,
25 demands, exacts, solicits, seeks, accepts, receives, or agrees

1 to receive anything of value for himself or for any other
2 person or entity in return for being influenced in his testi-
3 mony under oath or affirmation as a witness upon any such
4 trial, hearing, or other proceeding, or in return for absenting
5 himself therefrom—

6 “Shall be fined not more than \$20,000 or three times
7 the monetary equivalent of the thing of value, whichever is
8 greater, or imprisoned for not more than fifteen years, or
9 both, and may be disqualified from holding any office
10 of honor, trust, or profit under the United States.

11 “(f) Whoever, otherwise than as provided by law for
12 the proper discharge of official duty, directly or indirectly
13 gives, offers, or promises anything of value to any public
14 official, former public official, or person selected to be a pub-
15 lic official, for or because of any official act performed or to
16 be performed by such public official, former public official,
17 or person selected to be a public official; or

18 “(g) Whoever, being a public official, former public
19 official, or person selected to be a public official, otherwise
20 than as provided by law for the proper discharge of official
21 duty, directly or indirectly asks, demands, exacts, solicits,
22 seeks, accepts, receives, or agrees to receive anything of
23 value for himself for or because of any official act performed
24 or to be performed by him; or

25 “(h) Whoever, directly or indirectly, gives, offers, or

1 promises anything of value to any person, for or because
2 of the testimony under oath or affirmation given or to be
3 given by such person as a witness upon a trial, hearing, or
4 other proceeding, before any court, any committee of either
5 House or both Houses of Congress, or any agency, com-
6 mission, or officer authorized by the laws of the United
7 States to hear evidence or take testimony, or for or be-
8 cause of his absence therefrom; or

9 “(i) Whoever, directly or indirectly, asks, demands,
10 exacts, solicits, seeks, accepts, receives, or agrees to receive
11 anything of value for himself for or because of the testimony
12 under oath or affirmation given or to be given by him as a
13 witness upon any such trial, hearing, or other proceeding,
14 or for or because of his absence therefrom—

15 “Shall be fined not more than \$10,000 or imprisoned
16 for not more than two years, or both.

17 “(j) Subsections (d), (e), (h), and (i) shall not be
18 construed to prohibit the payment or receipt of witness fees
19 provided by law, or the payment, by the party upon whose
20 behalf a witness is called and receipt by a witness, of
21 the reasonable cost of travel and subsistence incurred and the
22 reasonable value of time lost in attendance at any such trial,
23 hearing, or proceeding, or, in the case of expert witnesses,
24 involving a technical or professional opinion, a reasonable

1 fee for time spent in the preparation of such opinion, and in
2 appearing and testifying.

3 “(k) The offenses and penalties prescribed in this sec-
4 tion are separate from and in addition to those prescribed in
5 sections 1503, 1504, and 1505 of this title.”

6 **“§ 202. Definitions**

7 “(a) For the purpose of sections 203, 205, 207, 208,
8 and 209 of this title the term ‘special Government employee’
9 shall mean an officer or employee of the executive *or legisla-*
10 *tive* branch of the United States Government, of any
11 independent agency of the United States or of the District
12 of Columbia, who is retained, designated, appointed, or
13 employed to perform, with or without compensation, for
14 not to exceed one hundred and thirty days during any period
15 of three hundred and sixty-five consecutive days, temporary
16 duties either on a full-time or intermittent basis, *or a part-*
17 *time United States Commissioner. Notwithstanding the next*
18 *preceding sentence, every person serving as a part-time local*
19 *representative of a Member of Congress in the Member’s*
20 *home district or State shall be classified as a special Gov-*
21 *ernment employee. Notwithstanding section 29 (c) and (d)*
22 *of the Act of August 10, 1956 (70A Stat. 632; 5 U.S.C. 30r*
23 *(c) and (d)), a Reserve officer of the Armed Forces, or an*
24 *officer of the National Guard of the United States, unless*

1 otherwise an officer or employee of the United States, shall be
 2 classified as a special Government employee while on active
 3 duty solely for training. A Reserve officer of the Armed
 4 Forces or an officer of the National Guard of the United
 5 States who is *voluntarily* serving a period of extended active
 6 duty in excess of one hundred and thirty days shall be classi-
 7 fied as an officer of the United States within the meaning of
 8 section 203 and sections 205 through 209 and 218. *A Re-*
 9 *serve officer of the Armed Forces or an officer of the National*
 10 *Guard of the United States who is serving involuntarily*
 11 *shall be classified as a special Government employee.* The
 12 terms ‘officer or employee’ and ‘special Government em-
 13 ployee’ as used in sections 203, 205, 207 through 209, and
 14 218, shall not include enlisted members of the Armed Forces.

15 “(b) For the purposes of sections ~~203, 205,~~ 205 and 207
 16 of this title, the term ‘official responsibility’ means the direct
 17 administrative or operating authority, whether intermediate
 18 or final, and either exercisable alone or with others, and
 19 either personally or through subordinates, to approve, dis-
 20 approve, or otherwise direct Government action.

21 **“§ 203. Compensation to Members of Congress, officers, and**
 22 **others in matters affecting the Government**

23 “(a) Whoever, otherwise than as provided by law for
 24 the proper discharge of official duties, directly or indirectly
 25 receives or agrees to receive, or asks, demands, solicits, or

1 seeks, any compensation for any services rendered or to be
2 rendered either by himself or another—

3 “(1) at a time when he is a Member of Congress,
4 Member of Congress Elect, Resident Commissioner, or
5 Resident Commissioner Elect; or

6 “(2) at a time when he is an officer or employee of
7 the United States in the executive, legislative, or judicial
8 branch of the Government, or in any agency of the
9 United States, including the District of Columbia,
10 in relation to any proceeding, application, request for a
11 ruling or other determination, contract, claim, controversy,
12 charge, accusation, arrest, or other particular matter in
13 which the United States is a party or has a direct and
14 substantial interest, before any department, agency, court-
15 martial, officer, or any civil, military, or naval commission,
16 or

17 “(b) Whoever, knowingly, otherwise than as provided
18 by law for the proper discharge of official duties, directly
19 or indirectly gives, promises, or offers any compensation for
20 any such services rendered or to be rendered at a time when
21 the person to whom the compensation is given, promised, or
22 offered, is or was such a Member, Commissioner, officer, or
23 employee—

24 “Shall be fined not more than \$10,000 or imprisoned

1 for not more than two years, or both; and shall be incapable
 2 of holding any office of honor, trust, or profit under the
 3 United States.

4 “(c) A special Government employee shall be sub-
 5 ject to subsection (a) only in relation to a particular matter
 6 *involving a specific party or parties* (1) in which he has at
 7 any time participated personally and substantially as a
 8 Government employee or as a special Government employee
 9 through decision, approval, disapproval, recommendation,
 10 the rendering of advice, investigation or otherwise, or (2)
 11 ~~which is or within two years has been a subject of his official~~
 12 ~~responsibility, or (3)~~ which is pending in the department or
 13 agency of the Government in which he is serving: *Provided,*
 14 That clause ~~(3)~~ (2) shall not apply in the case of a special
 15 Government employee who serves no more than fifteen days
 16 during any period of three hundred and sixty-five consecutive
 17 days has served in such department or agency no more than
 18 sixty days during the immediately preceding period of three
 19 hundred and sixty-five consecutive days.

20 **“§ 204. Practice in Court of Claims by Members of**
 21 **Congress**

22 “Whoever, being a Member of Congress, Member of
 23 Congress Elect, Resident Commissioner, or Resident Com-
 24 missioner Elect, practices in the Court of Claims, shall be
 25 fined not more than \$10,000 or imprisoned for not more

1 than two years, or both, and shall be incapable of holding
2 any office of honor, trust, or profit under the United States.

3 **“§ 205. Activities of officers and employees in claims**
4 **against and other matters affecting the Gov-**
5 **ernment**

6 “Whoever, being an officer or employee of the United
7 States in the executive, legislative, or judicial branch of the
8 Government or in any agency of the United States, includ-
9 ing the District of Columbia, otherwise than in the proper
10 discharge of his official duties—

11 “(1) acts as agent or attorney for prosecuting any
12 claim against the United States, or receives any gratu-
13 ity, or any share of or interest in any such claim in
14 consideration of assistance in the prosecution of such
15 claim, or

16 “(2) acts as agent or attorney for anyone before
17 any department, agency, court, court-martial, officer, or
18 any civil, military, or naval commission in connection
19 with any proceeding, application, request for a ruling
20 or other determination, contract, claim, controversy,
21 charge, accusation, arrest, or other particular matter in
22 which the United States is a party or has a direct and
23 substantial interest—

24 “Shall be fined not more than \$10,000 or imprisoned for
25 not more than two years, or both.

1 “A special Government employee shall be subject to the
 2 preceding paragraphs only in relation to a particular mat-
 3 ter *involving a specific party or parties* (1) in which he has
 4 at any time participated personally and substantially as a
 5 Government employee or as a special Government employee
 6 through decision, approval, disapproval, recommendation, the
 7 rendering of advice, investigation or otherwise, or (2) which
 8 is ~~or within two years~~ has been a subject of his official
 9 responsibility, ~~or (3)~~ which is pending in the department or
 10 agency of the Government in which he is serving: *Provided,*
 11 That clause ~~(3)~~(2) shall not apply in the case of a special
 12 Government employee who serves ~~no more than fifteen days~~
 13 ~~during any period of three hundred and sixty-five consecutive~~
 14 ~~days~~ *has served in such department or agency no more than*
 15 *sixty days during the immediately preceding period of three*
 16 *hundred and sixty-five consecutive days.*

17 “Nothing herein prevents an officer or employee ~~from~~
 18 ~~taking uncompensated action, not inconsistent with the~~
 19 ~~faithful performance of his duties, to aid or assist any person~~
 20 ~~who is the subject of disciplinary, loyalty, or other person-~~
 21 ~~nel administration proceedings with respect to those pro-~~
 22 ~~ceedings, if not inconsistent with the faithful performance~~
 23 ~~of his duties, from acting without compensation as agent or~~
 24 ~~attorney for any person who is the subject of disciplinary,~~

1 *loyalty, or other personnel administration proceedings in*
2 *connection with those proceedings.*

3 “Nothing herein or in section 203 prevents an officer or
4 employee, including a special Government employee, from
5 acting, with or without compensation, as agent or attorney
6 for ~~or otherwise aiding or assisting~~ his parents, spouse, child,
7 or any person for whom, *or for any estate for which*, he is
8 serving as guardian, executor, administrator, trustee, or other
9 personal fiduciary except in those matters in which he has
10 participated personally and substantially as a Government
11 employee, through decision, approval, disapproval, recom-
12 mendation, the rendering of advice, investigation, or other-
13 wise, or which are the subject of this official responsibility,
14 provided that the Government official responsible for appoint-
15 ment to his position approves.

16 ~~“Nothing herein or in section 203 or 207 prevents~~
17 ~~a present or former special Government employee from aid-~~
18 ~~ing or assisting another person in the performance of work~~
19 ~~under a contract with or for the benefit of the United States~~
20 ~~provided that the head of such special Government em-~~
21 ~~ployee’s department or agency shall certify in writing that~~
22 ~~the national interest requires such aid or assistance.~~

23 “*Nothing herein or in section 203 prevents a special Gov-*
24 *ernment employee from acting as agent or attorney for an-*

1 other person in the performance of work under a grant by,
2 or a contract with or for the benefit of, the United States pro-
3 vided that the head of the department or agency concerned
4 with the grant or contract shall certify in writing that the
5 national interest so requires.

6 “Such certification shall be published in the Federal
7 Register.

8 “Nothing herein prevents an officer or employee from
9 giving testimony under oath or from making statements
10 required to be made under penalty for perjury or contempt.

11 **“§ 206. Exemption of retired officers of the Armed Forces**
12 ***uniformed services***

13 “Sections 203 and 205 of this title shall not apply to a
14 retired officer of the ~~Armed Forces~~ *uniformed services* of the
15 United States while not on active duty and not otherwise an
16 officer or employee of the United States, or to any person
17 specially excepted by Act of Congress.

18 **“§ 207. Disqualification of former officers and employees**
19 **in matters connected with former duties or offi-**
20 **cial responsibilities; disqualification of partners**

21 “(a) Whoever, having been an officer or employee of
22 the executive branch of the United States Government, of
23 any independent agency of the United States, or of the
24 District of Columbia, including a special Government em-
25 ployee, after his employment has ceased, knowingly acts as

1 agent or attorney for anyone other than the United States
2 in connection with any judicial or other proceeding, applica-
3 tion, request for a ruling or other determination, contract,
4 claim, controversy, charge, accusation, arrest, or other partic-
5 ular matter *involving a specific party or parties* in which the
6 United States is a party or has a direct and substantial inter-
7 est and in which he participated personally and substantially
8 as an officer or employee, through decision, approval, dis-
9 approval, recommendation, the rendering of advice, inves-
10 tigation, or otherwise, while so employed, or

11 “(b) Whoever, having been so employed, within ~~two~~
12 ~~years~~ *one year* after his last employment has ceased, appears
13 personally before any court or department or agency of the
14 Government as agent, or attorney for, anyone other than
15 the United States in connection with any proceeding, appli-
16 cation, request for a ruling or other determination, contract,
17 claim, controversy, charge, accusation, arrest, or other par-
18 ticular matter *involving a specific party or parties* in which
19 the United States is a party or directly and substantially in-
20 terested, and which was under his official responsibility as an
21 officer or employee of the Government at any time within
22 a period of ~~two years~~ *one year* prior to the termination of
23 ~~his employment~~ *such responsibility—*

24 “Shall be fined not more than \$10,000 or imprisoned
25 for not more than two years, or both: *Provided, That noth-*

1 *ing in subsection (a) or (b) prevents a former officer or*
2 *employee, including a former special Government employee,*
3 *with outstanding scientific or technological qualifications from*
4 *acting as attorney or agent or appearing personally in con-*
5 *nection with a particular matter in a scientific or technological*
6 *field if the head of the department or agency concerned with*
7 *the matter shall make a certification in writing, published in*
8 *the Federal Register, that the national interest would be*
9 *served by such action or appearance by the former officer or*
10 *employee.*

11 ~~“(e) Whoever, being a partner of a former officer or~~
12 ~~employee of the executive branch of the United States Gov-~~
13 ~~ernment, of any independent agency of the United States, or~~
14 ~~of the District of Columbia, including a former special Gov-~~
15 ~~ernment employee, engages, during a period of two years~~
16 ~~following the termination of the latter’s employment by the~~
17 ~~Government, in any activities which such former officer or~~
18 ~~employee of the Government or special Government em-~~
19 ~~ployee is himself prohibited from engaging in by subsection~~
20 ~~(a) hereof; or~~

21 ~~“(d) (c) Whoever, being a partner of an officer or~~
22 ~~employee of the executive branch of the United States Gov-~~
23 ~~ernment, of any independent agency of the United States,~~
24 ~~or of the District of Columbia, including a special Govern-~~
25 ~~ment employee, acts as agent or attorney for anyone~~

1 other than the United States, in connection with any
2 judicial or other proceeding, application, request for
3 a ruling or other determination, contract, claim, contro-
4 versy, charge, accusation, arrest, or other particular matter
5 in which the United States is a party or has a direct and
6 substantial interest and in which such officer or employee of
7 the Government or special Government employee partici-
8 pates or has participated personally and substantially as a
9 Government employee through decision, approval, disap-
10 proval, recommendation, the rendering of advice, investiga-
11 tion or otherwise, or which is the subject of his official
12 responsibility—

13 “Shall be fined not more than \$5,000, or imprisoned
14 not more than one year, or both.

15 “A partner of a present or former officer or employee of
16 the executive branch of the United States Government, of
17 any independent agency of the United States, or of the
18 District of Columbia or of a present or former special Gov-
19 ernment employee shall as such be subject to the provisions
20 of sections 203, 205, and 207 of this title only as expressly
21 provided in subsections ~~(e)~~ and ~~(d)~~ subsection (c) of this
22 section.

23 **“§ 208. Acts affecting a personal financial interest**

24 “(a) Except as permitted by subsection (b) hereof,
25 whoever, being an officer or employee of the executive

1 branch of the United States Government, of any independent
2 agency of the United States, or of the District of Columbia,
3 including a special Government employee, participates per-
4 sonally and substantially as a Government officer or em-
5 ployee, through decision, approval, disapproval, recommen-
6 dation, the rendering of advice, investigation, or otherwise,
7 in a ~~Government action, proceeding,~~ *judicial or other pro-*
8 *ceeding, application, request for a ruling or other determina-*
9 *tion, contract, claim, controversy, charge, accusation, arrest,*
10 or other particular matter in which, to his knowledge, he, his
11 spouse, *minor* child, partner, ~~business~~ organization in which
12 he is serving as officer, director, trustee, partner or employee,
13 or any person or organization with whom he is negotiating
14 or has any arrangement concerning prospective employment,
15 has a financial interest,

16 “Shall be fined not more than \$10,000, or imprisoned
17 not more than two years, or both.

18 “(b) Subsection (a) hereof shall not apply (1) if the
19 officer or employee first advises the Government official re-
20 sponsible for appointment to his position of the nature and
21 circumstances of the ~~action, proceeding,~~ *judicial or other pro-*
22 *ceeding, application, request for a ruling or other determina-*
23 *tion, contract, claim, controversy, charge, accusation, arrest,*
24 or other particular matter and makes full disclosure of the
25 financial interest and receives in advance a written determi-

1 nation made by such official that the interest is not so sub-
2 stantial as to be deemed likely to affect the integrity of the
3 services which the Government may expect from such officer
4 or employee, or (2) if, by general rule or regulation pub-
5 lished in the Federal Register, the financial interest has been
6 exempted from the requirements of clause (1) hereof as
7 being too remote or too inconsequential to affect the integrity
8 of Government officers' or employees' services.

9 **“§ 209. Salary of Government officials and employees pay-**
10 **able only by United States**

11 “(a) Whoever receives any salary, or any contribu-
12 tion to or supplementation of salary, as compensation for
13 his services as an officer or employee of the executive branch
14 of the United States Government, of any independent
15 agency of the United States, or of the District of Columbia,
16 from any source other than the Government of the United
17 States, except as may be contributed out of the treasury of
18 any State, county, or municipality; or

19 “Whoever, whether an individual, partnership, associa-
20 tion, corporation, or other organization pays, or makes any
21 contribution to, or in any way supplements the salary of,
22 any such officer or employee under circumstances which
23 would make its receipt a violation of this subsection—

24 “Shall be fined not more than \$5,000 or imprisoned not
25 more than one year, or both.

1 “(b) Nothing herein prevents an officer or employee of
2 the executive branch of the United States Government, or of
3 any independent agency of the United States, or of the Dis-
4 trict of Columbia, from continuing to participate in a bona
5 fide pension, retirement, group life, health or accident insur-
6 ance, profit-sharing, stock bonus, or other employee welfare
7 or benefit plan maintained by a former employer.

8 “(c) This section does not apply to a special Govern-
9 ment employee or to an officer or employee of the Govern-
10 ment serving without compensation, whether or not he is a
11 special Government employee, or to any person paying,
12 contributing to, or supplementing his salary as such.”

13 “(d) This section does not prohibit payment or accept-
14 ance of contributions, awards, or other expenses under the
15 terms of the Government Employees Training Act (Public
16 Law 85-507, 72 Stat. 327; 5 U.S.C. 2301-2319, July 7,
17 1958).”

18 (b) Sections 214 and 215 of chapter 11 of title 18 of
19 the United States Code are respectively redesignated sections
20 210 and 211;

21 (c) Sections 216 and 223 of chapter 11 of title 18 of
22 the United States Code are repealed;

23 (d) Sections 217, 218, 219, 220, 221, and 222 of
24 chapter 11 of title 18 of the United States Code are respec-

1 tively redesignated sections 212, 213, 214, 215, 216, and
2 217;

3 (e) Chapter 11 of title 18 of the United States Code
4 is further amended by adding at the end thereof the following
5 new section:

6 **“§ 218. Voiding transactions in violation of chapter; re-**
7 **covery by the United States**

8 “In addition to any other remedies provided by law
9 the President or, under regulations prescribed by him, the
10 head of any department or agency involved, may declare
11 void and rescind any contract, loan, grant, subsidy, license,
12 right, permit, franchise, use, authority, privilege, benefit,
13 certificate, ruling, decision, opinion, or rate schedule awarded,
14 granted, paid, furnished, or published, or the performance
15 of any service or transfer or delivery of any thing to, by
16 or for any agency of the United States or officer or employee
17 of the United States or person acting on behalf thereof, in
18 relation to which there has been a final conviction for any
19 violation of this chapter, and the United States shall be
20 entitled to recover in addition to any penalty prescribed by
21 law or in a contract the amount expended or the thing
22 transferred or delivered on its behalf, or the reasonable
23 value thereof.”

24 SEC. 2. Sections 281 and 283 (except as they may

1 apply to retired officers of the armed forces of the United
2 States), 282 and 284 of chapter 15 of title 18, section 434
3 of chapter 23 of title 18, and section 1914 of chapter 93 of
4 title 18 of the United States Code are repealed and will, re-
5 spectively, be supplanted by sections 203, 205, 204, 207,
6 208, and 209 of title 18 of the United States Code as set
7 forth in section 1 of this Act. All exemptions from the pro-
8 visions of sections 281, 282, 283, 284, 434, or 1914 of title
9 18 of the United States Code heretofore created or author-
10 ized by statute which are in force on the effective date of
11 this Act shall, on and after that date, be deemed to be ex-
12 emptions from sections 203, 204, 205, 207, 208, or 209,
13 respectively, of title 18 of the United States Code except to
14 the extent that they affect officers or employees of the execu-
15 tive branch of the United States Government, of any inde-
16 pendent agency of the United States, or of the District of
17 Columbia, as to whom they are no longer applicable.

18 SEC. 3. Section 190 of the Revised Statutes (5 U.S.C.
19 99) is repealed.

20 SEC. 4. This Act shall take effect ninety days after the
21 date of its enactment.

Passed the House of Representatives August 7, 1961.

Attest:

RALPH R. ROBERTS,

Clerk.

87TH CONGRESS
2^D Session

H. R. 8140

[Report No. 2213]

AN ACT

To strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes.

AUGUST 8, 1961

Read twice and referred to the Committee on the
Judiciary

SEPTEMBER 29, 1962

Reported with amendments

Oct. 2, 1962

Senate

11. LOANS. Passed without amendment H. R. 12653, to amend the Consolidated Farmers Home Administration Act of 1961 in order to increase from \$150 million to \$200 million annually the amount of loans which may be insured under the Act. This bill will now be sent to the President. pp. 20491-2
Passed without amendment H. R. 946, to extend to oyster planters the benefits of the provisions of present law which provide for production disaster loans for farmers and stockmen. This bill will now be sent to the President. p. 20491
12. SCHOOL LUNCH. Both Houses received and the Senate agreed to the conference report on H. R. 11665, to amend the National School Lunch Act so as to revise the formula for apportioning cash assistance funds to States to base it on the number of lunches served in the preceding year and a slightly modified assistance need factor (instead of on the number of children aged 5 to 17 and the assistance need factor) and provide for a three-year transition to the new formula (25 percent of the funds being apportioned on the new formula the first year, 50 percent the second year, and 75 percent on the new formula the third year)(H. Rept. 2512). pp. 20535, 20595-6, 20571, 20650
13. FOREIGN AID APPROPRIATION BILL, 1963. By a vote of 57 to 24, passed with amendments this bill, H. R. 13175. Conferees were appointed. pp. 20446-68, 20494-5, 20500-03, 20510-3
14. WORLD FOOD CONGRESS. The Foreign Relations Committee reported with amendment S. 3679, to authorize appropriations to enable the U. S. to extend an invitation to the Food and Agricultural Organization of the U. N. to hold a World Food Congress in the U. S. in 1963 (S. Rept. 2263). p. 20514
15. MINERALS. Passed as reported S. 1698, to authorize the Secretary of the Interior to conduct a survey of federally-owned lands for the purpose of locating strategic minerals. pp. 20475-6
16. TOBACCO. Passed without amendment H. R. 12855, to amend the Agricultural Adjustment Act of 1938 providing for the lease and transfer of tobacco acreage allotments so as to exclude cigar-filler and cigar-binder tobacco, types 42, 43, 44, 53, 54, and 55 from the lease and transfer authority. This bill will now be sent to the President. p. 20492
17. ELECTRIFICATION. Passed as reported H. R. 10708, to amend the Rural Electrification Act of 1936 so as to authorize REA to finance communication facilities for the transmission of sounds, signals, pictures, writing, or signs as well as voice. p. 20492
18. EDUCATION. Passed as reported S. 3477, to provide a program to assist the States in further developing their programs of general university extension education to be operated by the State universities and land-grant colleges. pp. 20476-8
19. FORESTRY. Passed as reported S. 3370, to authorize the Secretary of Agriculture to relinquish to Wyo. jurisdiction over those lands within the Medicine Bow National Forest known as the Pole Mountain District. p. 20492
Sen. Yarborough inserted an article discussing the purpose and problems of the national parks, "National Parks - A National Issue." pp. 20492-3
20. BONDING. Received from Treasury a report on operations in connection with the bonding of Government officers and employees for fiscal year 1962. pp. 20513-4
21. COMMUNICATIONS. The Government Operations Committee reported without amendment H. R. 11899, to amend the Federal Property and Administrative Services Act so

as to provide for a Federal telecommunications fund (S. Rept. 2262). p. 20514

22. WATER POLLUTION. Passed without amendment H. R. 10617, to give the U. S. district courts concurrent original jurisdiction of cases involving the pollution of interstate river systems where the pollution is an alleged violation of an interstate compact and the signatory States have consented to such jurisdiction in their compact. This bill will now be sent to the President. pp. 20479-80
23. PUBLIC LANDS. Passed without amendment H. Con. Res. 574, to authorize the compiling and printing of a U. S. map showing the extent of public surveys, national forests, national parks, reclamation projects, etc. p. 20487
24. APPROPRIATIONS. Sen. Smathers submitted notice of his intention to suspend the rules for the purpose of proposing an amendment to H. R. 13290, the supplemental appropriation bill, so as to include the provisions of a recently passed bill to provide for retirement plans for self-employed individuals. pp. 20515-21
25. PASSED OVER the following bills:
 - ~~S. 2225, to fix the fees payable to the Patent Office. p. 20473~~
 - H. R. 8140, to strengthen the laws relating to conflict of interest. p. 20480
26. LIBRARY. Sen. Jordan inserted a report of the Library of Congress on its functions and programs. pp. 20523-31
27. TRADE FAIRS. Conferees were appointed on S. 3389, to promote the foreign trade of the U. S. through the use of mobile trade fairs. House conferees have not yet been appointed. p. 20535
28. MIGRATORY BIRDS. Concurred in the House amendment to S. 3504, to authorize the appropriation of \$7500 for expenses of the Migratory Bird Conservation Commission. This bill will now be sent to the President. p. 20540
29. TRANSPORTATION. Agreed to the conference report on S. 320, to amend the Interstate Commerce Act so as to permit State commissions to grant the right to motor common carriers operating within a single State to engage in interstate or foreign operations within the State. This bill will now be sent to the President. pp. 20546-7
30. PATENTS. Passed as reported S. 2639, to amend title 35, U.S.C., to permit a written declaration to be accepted in lieu of an oath from applicants for patents or trademarks. pp. 20566-7
 - Passed as reported H. R. 12513, to provide for public notice of settlements in patent interferences. p. 20566
31. STATE-JUSTICE-COMMERCE APPROPRIATION BILL, 1963. This bill, H. R. 12580, was made the unfinished business of the Senate. p. 20567
32. WATERSHEDS. The "Daily Digest" states that the Public Works Committee "in executive session, approved the following watershed projects: Tobesoskee Creek, Ga.; Cottonwood Creek, Okla.; Delaware Creek, Okla.; and Boulder Lake Watershed, Wyo." p. D927
33. LEGISLATIVE PROGRAM. Sen. Mansfield announced that H. R. 8140, to strengthen the criminal laws relating to bribery, graft, and conflict of interest, will be considered on Wed., followed by the State, Justice, and Commerce appropriation bill; the conference report on the drug bill; and the conference report on the

"The northern district of Ohio is divided into two divisions, eastern and western. The eastern division is authorized to hold court at Cleveland, Youngstown, and Akron. Federal facilities for the holding of court at these places are provided for at Cleveland and Youngstown, but Akron does not have Federal facilities.

"According to the census figures of 1960, the eastern division of the northern district of Ohio covers an area of 9,016 square miles and contains within that area a population of 4,179,813 people.

"In view of the increase in population and the expansion of the economy and industry in the area in and about Akron, Ohio, your committee is of the opinion that permanent Federal facilities for the U.S. District Court for the Northern District of Ohio should be provided for in the proposed new Federal building at Akron, Ohio. There are several Federal activities at Akron that require special purpose space or require a particular location by reason of their operations. Such Federal units are the Agriculture Department, the Federal Aviation Agency, the Commerce Department, and Reserve units of the Defense Department.

"In order that court facilities may be provided for in the contemplated Federal building at Akron, Ohio, it is necessary to waive the provisions of section 142, title 28, United States Code, which provide as follows:

"'Court shall be held only at places where Federal quarters and accommodations are available, or suitable quarters and accommodations are furnished without cost to the United States.'

"Your committee is informed that by resolution dated April 7, 1962, the Senate Committee on Public Works requested a report of building project survey for Akron. This study has been completed and was transmitted to the Committees on Public Works of the Senate and House of Representatives August 10, 1962. The report, in stating all Federal space requirements, included 13,930 square feet for use by the U.S. courts in accordance with a recent request from the Administrative Office of the U.S. Courts. General Services Administration interposes no objection to this legislation. The cost of the new Federal facility at Akron which the General Services Administration has approved on a planned basis would involve an estimate of \$600,000.

"However, it should be pointed out here that the procedure followed by the General Services Administration is to consult with all interested parties. Then, prior to the appropriation of funds for any acquisition, construction, or alteration of public buildings, the General Services Administration is required, pursuant to section 7 of the Public Buildings Act of 1959, where the construction or acquisition of any building involves an expenditure in excess of \$100,000 or where the alteration of any public building involves an expenditure in excess of \$200,000, to transmit to the Congress a prospectus of the proposed projects which contains a brief description of the facilities to be included in the project, including any necessary court facilities. That section also requires approval by the Public Works Committees of the House and Senate before an appropriation may be made for any project in excess of \$100,000 in the case of acquisition and construction, and \$200,000 in the case of an alteration."

The committee, after consideration of the foregoing, concurs in the conclusion reached and the action taken by the House of Representatives and, accordingly, recommends that the bill, H.R. 11678, be considered favorably.

MILOYE M. SOKITCH

The bill (S. 2344) for the relief of Miloye M. Sokitch was considered, or-

dered to be engrossed for a third reading, read the third time, and passed as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding any provisions of title III of the International Claims Settlement Act of 1949, as amended, limiting the period within which claims may be filed thereunder, including section 316 of such Act (22 U.S.C. 1641o), the Foreign Claims Settlement Commission of the United States is authorized and directed (1) to receive, consider, and act upon any claims of Miloye M. Sokitch of Washington, District of Columbia, filed within six months after the date of enactment of this Act, against the Government of Italy, as if such claims had been filed within the time and manner provided in the International Claims Settlement Act of 1949, and (2) to certify to the Secretary of the Treasury for payment out of remaining balances in the Italian claims fund any award issued pursuant to such claims. The Secretary of the Treasury is authorized and directed to pay to the said Miloye M. Sokitch out of such fund, in accordance with the provisions of section 310 of such Act (22 U.S.C. 1641i), the amount of any such award so certified by the Commission. Nothing in this Act shall constitute an admission of liability on the part of the United States.

JEAN ROSEN

The bill (S. 3645) for the relief of Jean Rosen was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Jean Rosen, of Upper Black Eddy, Pennsylvania, the sum of \$20,000. The payment of such sum shall be in full satisfaction and final settlement of the claim of the said Jean Rosen arising out of an accident which occurred on or about February 22, 1943, when the Pan American Airways seaplane "Yankee Clipper", on which she was traveling to entertain members of the Armed Forces of the United States crashed in the Tagus River in the Port of Lisbon, Portugal.

(b) The sum appropriated by this section is the amount found by the Court of Claims, acting pursuant to section 2 of the Act entitled "An Act for the relief of Jane Froman, Gypsy Markoff, and Jean Rosen", approved August 27, 1958 (72 Stat. A189), to be equitably due the said Jean Rosen over and above the amount paid to her pursuant to the first section of such Act.

Sec. 2. No part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000.

MARGARET MACPHERSON

The bill (H.R. 1660) for the relief of Margaret MacPherson, Angus MacPherson, Ruth MacPherson, and Marilyn MacPherson was considered, ordered to a third reading, read the third time, and passed.

LT. COL. EDWARD HIRSCH

The bill (H.R. 9590) for the relief of Lt. Col. Edward Hirsch was considered, ordered to a third reading, read the third time, and passed.

JURISDICTION OF CERTAIN CASES INVOLVING POLLUTION OF INTERSTATE RIVER SYSTEMS

The bill (H.R. 10617) providing that the U.S. district court shall have jurisdiction of certain cases involving pollution of interstate river systems, and providing for the venue thereof was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report No. 2211, explaining the purposes of the bill.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE

The purpose of the proposed legislation is to give the U.S. district courts concurrent original jurisdiction of cases involving the pollution of interstate river systems where the pollution is an alleged violation of an interstate compact and the signatory States have consented to such jurisdiction in their compact.

STATEMENT

The States of Texas, Arkansas, Oklahoma, and Louisiana are in process of negotiating an interstate compact for the apportionment of the waters of the Red River and for control of its pollution. These States desire to assure an impartial Federal forum for the litigation of water pollution issues that may arise under the compact, without need to resort directly to the Supreme Court where the controversy is between sovereign States.

The Constitution gives the Supreme Court original (but not exclusive) jurisdiction of suits by a State against another State or its citizens. Statute law (28 U.S.C. 1251(a)(1)) makes such Supreme Court jurisdiction exclusive in controversies between States. Further, statute law makes the Supreme Court's jurisdiction nonexclusive in actions by a State against a citizen of another State (29 U.S.C. 1251(b)(3)), but no statute has been found which specifies that the district courts have jurisdiction of such cases.

WHAT THE BILL DOES

H.R. 10617 would give the U.S. district courts concurrent, original jurisdiction of any case or controversy satisfying all of the following conditions:

1. It involves the construction or application of an interstate compact which (a) relates in whole or in part to the pollution of an interstate river system; and (b) expresses the consent of the signatory States to be sued in a district court in cases involving the construction or application thereof;
2. It involves the pollution of the waters of such river systems in alleged violation of the compact;
3. One or more of the compacting States is plaintiff; and
4. The case or controversy is within the judicial power of the United States as set forth in the Constitution.

The jurisdiction conferred by the bill would be without any limitation as regards the value of the matter in controversy and irrespective of the place of residence, situs, citizenship, nature, character, or legal status of all parties other than the compacting plaintiff State or States, provided that nothing in the bill is to be construed as authorizing a State to sue its own citizens in said district courts.

Existing venue rules would be expanded by including the judicial district in which the acts of pollution occur.

The bill does not express consent of the United States to be sued.

SECTION ANALYSIS

Section 1(a) of H.R. 10617, as amended, provides that the U.S. district courts shall have original jurisdiction (concurrent with that of the Supreme Court of the United States and that of any other Federal or State court having original jurisdiction) of any case or controversy involving the pollution of interstate river systems, where the pollution is an alleged violation of an interstate compact, in which the signatory States have consented to be sued in a district court, one or more of the plaintiffs is a compacting State, and the matter is within the judicial power of the United States.

Section 1(b) states that such jurisdiction shall be without any limitation as to the value of the matter in controversy and irrespective of the place of residence, situs, citizenship, nature, character, or legal status of parties other than the compacting plaintiff State or States, except that nothing in the bill should be construed as authorizing a State to sue its own citizens in said district courts.

Section 1(c), as amended, makes clear that the original jurisdiction conferred by the bill includes jurisdiction of suits between States signatory to the compact, but that nothing in the bill is to be construed as authorizing a State to sue another State which is not a signatory to such compact in the district courts.

Section 1(d) expands existing venue rules to include any judicial district in which the acts of pollution complained of occur: Section 2 of H.R. 10617 is a severability clause, saving valid portions of the bill if other portions should be declared invalid by a court.

AGENCY REPORTS

To meet an objection of the Department of Justice to an earlier version (H.R. 6717), the bill makes clear that it does not apply to suits by a State against its own citizens. With the exception of the objection noted the Department of Justice has expressed no objection to the legislation. The Department of the Army and the Department of Health, Education, and Welfare, defer to the Department of Justice. The Department of the Interior and the Judicial Conference of the United States make no recommendation. No agency has expressed opposition.

This committee is of the opinion that this proposed legislation serves a most useful and worthwhile purpose in providing for a forum wherein matters in controversy among States who have negotiated compacts can settle differences without resorting directly to the Supreme Court of the United States. It is, therefore, recommended that H.R. 10617 be favorably considered.

Attached to and made a part of this report are the reports of the Departments of Justice, the Army, and Health, Education, and Welfare on H.R. 6717, an earlier version of H.R. 10617.

LT. COL. WILLIAM A. CARTER

The Senate proceeded to consider the bill (S. 3394) for the relief of Lt. Col. William A. Carter, U.S. Air Force, which had been reported from the Committee on the Judiciary, with an amendment, to strike out all after the enacting clause and insert:

That William A. Carter, lieutenant colonel, United States Air Force (3019A), is relieved of all liability for repayment to the United States of the sum of \$2,793.21, representing the amount of overpayments of basic pay received by him for the period from June

23, 1942, through August 29, 1961, while he was serving as a member of the United States Army and the United States Air Force, such overpayment having been made as a result of administrative error.

SEC. 2. The Comptroller General of the United States or his designee shall relieve disbursing officers, including special disbursing agents, of the Army, Navy, and Air Force from accountability or responsibility for any payments described in section 1 of this Act, and shall allow credits in the settlement of the accounts of those officers or agents for payments which are found to be free from fraud and collusion.

SEC. 3. The Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the said William A. Carter, the sum of any amounts received or withheld from him on account of the overpayments referred to in section 1 of this Act.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

BILL PASSED OVER

The bill (H.R. 8140) to strengthen the criminal laws relating to bribery, graft, and conflict of interest, and for other purposes, was announced as next in order.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

Mr. MANSFIELD. Over.

The PRESIDING OFFICER. The bill will be passed over.

AMENDMENT OF THE DISTRICT OF COLUMBIA POLICE AND FIREMENS SALARY ACT OF 1958

The Senate proceeded to consider the bill (S. 3705) to amend the District of

Columbia Police and Firemens Salary Act of 1958, as amended, to increase salaries to adjust pay alignment, and for other purposes, which had been reported from the Committee on the District of Columbia, with an amendment on page 9, after line 4, to strike out:

(7) Each officer or member serving as a lieutenant in class 5 immediately prior to the effective date of this Act, with service as a corporal or higher rank prior to July 1, 1953, shall be advanced two steps in class 5 and shall receive the scheduled rate of basic compensation for the higher step. Any active service immediately prior to the effective date of this Act in any service step will be credited to the next higher service or longevity step.

After line 12, to strike out:

(8) Each officer or member serving as a captain in class 7 immediately prior to the effective date of this Act with service as a corporal or higher rank prior to July 1, 1953, shall be advanced two steps in class 7 and shall receive the scheduled rate of basic compensation for the higher step. Any active service immediately prior to the effective date of this Act in any service step will be credited to the next higher service or longevity step.

And, at the beginning of line 21, to strike out "(9)" and insert "(7)"; so as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 101 of the District of Columbia Police and Firemen's Salary Act of 1958 (72 Stat. 480), as amended (sec. 4-823, et seq., D.C. Code, 1961 edition), is amended to read as follows:

"SEC. 101. The annual rates of basic compensation of the officers and members of the Metropolitan Police force and the Fire Department of the District of Columbia shall be fixed in accordance with the following schedule of rates:

Salary schedule

Salary class and title	Service step 1	Service step 2	Service step 3	Service step 4	Service step 5	Service step 6	Longevity step 7	Longevity step 8	Longevity step 9
Class 1:									
Subclass (a).....	\$5, 650	\$5, 950	\$6, 250	\$6, 550	\$6, 850	\$7, 150	\$7, 450	\$7, 750	\$8, 050
Fire private.									
Police private.									
Subclass (b).....	5, 920	6, 220	6, 520	6, 820	7, 120	7, 420	7, 720	8, 020	8, 320
Private assigned as—									
Technician I.									
Plainclothesman. ¹									
Subclass (c).....	6, 190	6, 490	6, 790	7, 090	7, 390	7, 690	7, 990	8, 290	8, 590
Private assigned as—									
Technician II.									
Station clerk.									
Motorcycle officer.									
Class 2:									
Subclass (a).....	6, 550	6, 850	7, 150	7, 450	-----	-----	7, 750	8, 050	8, 350
Fire inspector.									
Subclass (b).....	6, 820	7, 120	7, 420	7, 720	-----	-----	8, 020	8, 320	8, 620
Fire inspector assigned as—									
Technician I.									
Subclass (c).....	7, 090	7, 390	7, 690	7, 990	-----	-----	8, 290	8, 590	8, 890
Fire inspector assigned as—									
Technician II.									
Class 3.....	6, 990	7, 290	7, 590	7, 890	-----	-----	8, 190	8, 490	8, 790
Assistant marine engineer.									
Assistant pilot.									
Detective.									
Class 4:									
Subclass (a).....	7, 450	7, 750	8, 050	8, 350	-----	-----	8, 650	8, 950	9, 250
Fire sergeant.									
Police sergeant.									
Subclass (b).....	7, 890	8, 190	8, 490	8, 790	-----	-----	9, 090	9, 390	9, 690
Detective sergeant.									
Subclass (c).....	7, 930	8, 230	8, 530	8, 830	-----	-----	9, 130	9, 430	9, 730
Police sergeant assigned as—									
Motorcycle officer.									
Class 5.....	8, 350	8, 725	9, 100	9, 475	-----	-----	9, 850	10, 225	-----
Fire lieutenant.									
Police lieutenant.									
Detective lieutenant.									

Footnote at end of table.

of charges against the farm bill by the publication of the Republican National Committee, defended the charges by the Committee, and stated that he was "quite willing to let the Democratic leadership take the responsibility for this unwise and costly piece of legislation." pp. 20862-5

16. WORLD FOOD CONGRESS. Passed as reported S. 3679, to authorize an appropriation to enable the U. S. to extend an invitation to the Food and Agriculture Organization of the U. N. to hold a World Food Congress in the U. S. in 1963. pp. 20889-90
17. TRANSPORTATION; GRAIN. Sen. Burdick commended the Car Service Section of the Interstate Commerce Commission in arranging for the movement of the 1962 grain crop to flour mills and shipping points. pp. 20797-8
18. PESTICIDES. Sen. Morse inserted a magazine article, "Pesticides: The Price for Progress," discussing the dangers of uncontrolled use of pesticides. pp. 20799-802
19. DAIRY PRODUCTS. Sen. Humphrey commended this Department's dairy donation program, stating that "America's abundant dairy production is being used effectively in providing butter, dry milk solids, and cheese to relieve human hunger at home and abroad." pp. 20804-5
20. STATE-JUSTICE-COMMERCE APPROPRIATION BILL FOR 1963. Passed with amendments this bill, H. R. 12580 (pp. 20805, 20830-55). Conferees were appointed by both Houses (pp. 20855, 20720). This bill includes \$32,000,000 for the Bureau of Public Roads for forest highways and \$115,050,000 for the Area Re-development Administration.
21. ETHICS; CONFLICT OF INTEREST. Passed as reported H. R. 8140, to strengthen the criminal laws relating to bribery, graft, and conflicts of interest. pp 20805-21
22. OCEANOGRAPHY. Agreed to the conference report on S. 901, to provide for the establishment of a comprehensive 10-year program of oceanographic research and surveys. This bill will now be sent to the President. pp. 20828-9
23. FOOD AND DRUGS. Both Houses received and the Senate agreed to the conference report on S. 1552, the proposed Drug Industry Act of 1962 (H. Rept. 2526) (pp 20720-8, 20787, 20867-87). The conferees accepted the House amendment clarifying the anticancer clause of the food additives amendment and the color additive amendment of the Food, Drug, and Cosmetic Act so as to make the clause inapplicable to chemicals, such as veterinary drugs, when used in feed for food-producing animals.
24. STATISTICS. Passed without amendment H. R. 7791, to provide for the collection and publication of foreign commerce and trade statistics. This bill will now be sent to the President. p. 20865
25. CENSUS. Passed as reported S. 3631, to preserve the confidential nature of copies of reports filed with the Bureau of the Census on a confidential basis. p. 20865
26. FORESTRY. Sen. Morse defended the location of forest fire research laboratories in Ga., Mont., and Calif., and disputed a newspaper editorial contending that the location of the laboratories were based on political influence. pp. 20923-4

27. MANPOWER DEVELOPMENT. Sen. Hart commended the program under the Manpower Development and Training Act, stating that it "is already proving its worth in Michigan." pp. 20802-3
28. SMALL BUSINESS. Sen. Sparkman submitted a report of the Select Committee on Small Business, "Small Business Failures" (S. Rept. 2270). p. 20790
29. COMMUNICATIONS. Passed without amendment H. R. 11899, to amend the Federal Property and Administrative Services Act of 1949, as amended, to provide for a Federal telecommunications fund. This bill will now be sent to the President. p. 20890
30. FOREIGN BUILDINGS. Passed with amendment H. R. 11880, to amend the Foreign Service Buildings Act, 1926, to authorize additional appropriations for foreign housing, including agricultural attache housing. Agreed to an amendment inserting the language of H. R. 11677, the proposed Equal Pay Act of 1962. pp. 20911-8
31. YOUTH CONSERVATION CORPS. Sen. Humphrey urged enactment of S. 404, the proposed Youth Employment Opportunities Act. pp. 20919-23

ITEMS IN APPENDIX

32. FARM PROGRAM. Extension of remarks of Sen. Wiley inserting a radio question-and-answer series in which he stated the "need for a renewed effort to find new--not adhere to unworkable--practices to brighten the outlook in agriculture." pp. A7287-8

BILLS INTRODUCED

33. PERSONNEL. S. 3780, by Sen. Javits, to simplify, modernize, and consolidate the laws relating to the employment of civilians in more than one position and the laws concerning the civilian employment of retired members of the uniformed services; to Post Office and Civil Service Committee. Remarks of author, p. 20794
34. AIR POLLUTION. S. 3784, by Sen. Engle, to extend and strengthen the Federal air pollution control program; to Public Works Committee
35. ORGANIZATION. H. R. 13315, by Rep. Pillion, to establish a Department of National Security and International Affairs; to Government Operations Committee.
36. SOCIAL SECURITY. H. R. 13323, by Rep. Fulton, to permit an individual to obtain coverage under title II of the Social Security Act on the basis of service which was not covered employment at the time it was performed, if service of that type has since become covered employment and such individual makes payment of the applicable social security taxes; to Ways and Means Committee.

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COMMITTEE HEARINGS OCT. 4:

Foreign aid appropriations bill, conferees (exec).

Use of electronic data processing equipment in Federal agencies, H. Civil Service (HEW, Labor, VA, and employee organizations to testify).

Supplemental appropriations, S. Appropriations (exec).

of 20 percent in volume through removal of salt and moisture. Sealed in tins, butter oil also is more easily distributed through the limited facilities generally available in underdeveloped countries around the globe. Most important, of course, butter oil is more familiar and acceptable to the people of the Mideast and Far East than is butter as we know it. Already 65 million pounds of butter oil are being shipped or available for shipment overseas—the equivalent of about 80 million pounds of butter. In addition, some 4½ million pounds of packaged butter is available now for shipment to those countries that have facilities for its handling and distribution.

The concentrated nutrients of nonfat dry milk solids also are helping to improve diets at home and abroad. This product is a great aid in providing better nutrition for children in many underdeveloped countries. During the past fiscal year more than 733 million pounds of the milk solids were distributed at home and abroad, compared with 530 million pounds in the previous year. We are in a position to supply all the milk powder that will be needed, and for oversea shipment alone some 870 million pounds have been made available this fiscal year.

American cheese, like butter, recently was made available for foreign donation, and 40 million pounds have been offered for immediate needs. Last year, 102 million pounds of cheese were donated to schools, institutions, and needy families in this country.

THE 125TH ANNIVERSARY OF PROTESTANTISM IN KANSAS

Mr. PEARSON. Mr. President, on October 21, 1962, the Protestant denominations will recognize the 125th anniversary of the beginning of Protestantism in the State of Kansas, and the establishment of the first known Protestant church west of the Missouri River. These events are being recognized throughout the State this year.

This religious movement into new and unsettled territory resulted in many great contributions to the building of moral, ethical, and spiritual standards of my State and of our country. From these concepts have grown the freedom that we cherish and enjoy.

The first Protestant church established in Kansas was established as a mission to the Iowa and Sac Indians by the Board of Foreign Missions of the United Presbyterian Church in the year 1837. Out of the original ministry grew many great denominations and also grew the first college in the State of Kansas known as the Highland College.

The Governor of Kansas, the Honorable John Anderson, Jr., has issued a statewide proclamation recognizing the anniversary, which reads as follows:

Whereas the Christian faith played an important part in the lives of the early settlers of Kansas; and

Whereas, those Christian principles adhered to by the early settlers are embodied in the constitution of the State of Kansas; and

Whereas the Synod of Kansas and the Topeka-Highland Presbytery throughout this

year, 1962, will be recognizing the founding of the Highland Presbyterian Mission in 1837, the birth of the Reverend S. M. Irvin, first Presbyterian missionary in Kansas, and the establishment of the first Protestant church organization in Kansas in 1843:

Now, therefore, I, John Anderson, Jr., Governor of the State of Kansas, do hereby proclaim the year 1962, as the 125th anniversary of the founding of the Highland Mission, and the 150th anniversary of the birth of the Reverend S. M. Irvin.

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

DEPARTMENTS OF STATE, JUSTICE, AND COMMERCE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS, 1963

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the unfinished business be laid before the Senate, and be made the pending business.

The PRESIDING OFFICER. Is there objection?

There being no objection, the Senate resumed the consideration of the bill (H.R. 12580) making appropriations for the Departments of State, Justice, and Commerce, the Judiciary, and related agencies for the fiscal year ending June 30, 1963, and for other purposes.

Mr. ELLENDER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The Chief Clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

STRENGTHENING OF CRIMINAL LAWS RELATING TO BRIBERY, GRAFT, AND CONFLICT OF INTEREST

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the pending business be laid aside temporarily, and that the Senate proceed to the consideration of Calendar No. 2176, House bill 8140.

The PRESIDING OFFICER. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (H.R. 8140) to strengthen the criminal laws relating to bribery, graft, and conflict of interest, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary with amendments on page 2, in the seventh line of the matter after line 2, after the numerals "206.", to strike out "Exemption of retired officers of the Armed Forces" and insert "Exemption of retired officers of the uniformed services"; in line 9, after the word "thereof", to insert "including the District of Columbia"; on page 7, line 9, after the word "executive", to insert "or legislative"; in line 16, after the word "basis", to insert a comma and "or a part-time

United States Commissioner. Notwithstanding the next preceding sentence, every person serving as a part-time local representative of a Member of Congress in the Member's home district or State shall be classified as a special Government employee."; on page 8, line 5, after the word "is", to insert "voluntarily"; in line 8, after the numerals "218", to insert "A Reserve officer of the Armed Forces or an officer of the National Guard of the United States who is serving involuntarily shall be classified as a special Government employee."; in line 15, after the word "sections", to strike out "203, 205," and insert "205"; on page 10, at the beginning of line 6, to insert "involving a specific party or parties"; at the beginning of line 11, to strike out "which is or within two years has been a subject of his official responsibility, or (3)"; in line 14, after the word "clause", to strike out "(3)" and insert "(2)"; in line 15, after the word "who", to strike out "serves no more than fifteen days during any period of three hundred and sixty-five consecutive days" and insert "has served in such department or agency no more than sixty days during the immediately preceding period of three hundred and sixty-five consecutive days"; on page 12, line 3, after the word "matter", to insert "involving a specific party or parties"; in line 7, after the numeral "(2)", to strike out "which is or within two years has been a subject of his official responsibility, or (3)"; in line 11, after the word "clause", to strike out "(3)" and insert "(2)"; in line 12, after the word "who", to strike out "serves no more than fifteen days during any period of three hundred and sixty-five consecutive days" and insert "has served in such department or agency no more than sixty days during the immediately preceding period of three hundred and sixty-five consecutive days"; in line 17, after the word "employee", to strike out "from taking uncompensated action, not inconsistent with the faithful performance of his duties, to aid or assist any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings" and insert "if not inconsistent with the faithful performance of his duties, from acting without compensation as agent or attorney for any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings"; on page 13, line 6, after the word "for", to strike out "or otherwise aiding or assisting"; in line 7, after the word "whom", to insert a comma and "or for any estate for which,"; after line 15, to strike out:

Nothing herein or in section 203 or 207 prevents as present or former special Government employee from aiding or assisting another person in the performance of work under a contract with or for the benefit of the United States provided that the head of such special Government employee's department or agency shall certify in writing that the national interest requires such aid or assistance.

And, in lieu thereof, to insert:

Nothing herein or in section 203 prevents a special Government employee from acting as agent or attorney for another person in the performance of work under a grant by,

or a contract with or for the benefit of, the United States provided that the head of the department or agency concerned with the grant or contract shall certify in writing that the national interest so requires.

On page 14, line 11, after the word "the", to strike out "Armed Forces" and insert "uniformed services"; in line 14, after the word "the", where it appears the first time, to strike out "Armed Forces" and insert "uniformed services"; on page 15, line 5, after the word "matter", to insert "involving a specific party or parties"; in line 11, after the word "within", to strike out "two years" and insert "one year"; in line 12, after the word "his", to strike out "last"; in line 13, after the word "matter", to insert "involving a specific party or parties"; in line 22, after the word "of", where it appears the first time, to strike out "two years" and insert "one year"; in line 23, to strike out "his employment" and insert "such responsibility"; in line 25, after the word "both", to insert a colon and "Provided, That nothing in subsection (a) or (b) prevents a former officer or employee, including a former special Government employee, with outstanding scientific or technological qualifications from acting as attorney or agent or appearing personally in connection with a particular matter in a scientific or technological field if the head of the department or agency concerned with the matter shall make a certification in writing, published in the Federal Register, that the national interest would be served by such action or appearance by the former officer or employee."; on page 16, after line 10, to strike out:

(c) Whoever, being a partner of a former officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a former special Government employee, engages, during a period of two years following the termination of the latter's employment by the Government, in any activities which such former officer or employee of the Government or special Government employee is himself prohibited from engaging in by subsection (a) hereof; or

At the beginning of line 21, to strike out "(d)" and insert "(c)"; on page 17, line 21, after the word "in", to strike out "subsection (c) and (d)" and insert "subsection (c)"; on page 18, line 7, after the word "a", to strike out "Government action, proceeding," and insert "judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest,"; in line 11, after the word "spouse," to insert "minor"; in the same line, after the word "partner," to strike out "business"; and in line 21, after the word "the", to strike out "action, proceeding," and insert "judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest,".

Mr. MANSFIELD. Mr. President, this is a bill which was reported out of the Judiciary Committee. It is my understanding it is agreeable to the Senator who is handling the bill, the distinguished Senator from Tennessee [Mr. KEFAUVER], and the distinguished Sena-

tor from New York [Mr. KEATING] that a limitation be requested on this measure. With that in mind, and if the Senate approves, I ask unanimous consent that 50 minutes be allocated to this bill, one-half to be under the control of the Senator from Tennessee [Mr. KEFAUVER] and the other half to be under the control of the Senator from New York [Mr. KEATING] or other Senators whom he may wish to designate.

The PRESIDING OFFICER. Is there objection? The Chair hears none—

Mr. KEATING. Mr. President, reserving the right to object—

Mr. MANSFIELD. And that there be a vote at the conclusion of that time.

Mr. KEATING. I would not want it to appear in the RECORD that because I am agreeing to the limitation I oppose the bill. I favor the bill. It is merely an accommodation.

Mr. MANSFIELD. That is correct. I add the further understanding that a vote be taken at the conclusion of that time.

Mr. KEFAUVER. Mr. President, reserving the right to object, am I to understand that the limitation of 50 minutes is on the bill?

Mr. MANSFIELD. Yes, with the understanding that at the conclusion of that period of time, or before that time, there be a vote.

The PRESIDING OFFICER. Without objection, the quorum call required by the rule is dispensed with.

Is there objection to the unanimous consent request?

Mr. KEFAUVER. Mr. President, reserving the right to object, does any Senator have any amendments?

Mr. KEATING. Mr. President, the Senator from Tennessee is looking at me with an inquisitive look. There are amendments at the desk. I intend to discuss them, but I have concluded it would be unwise at this stage of the proceedings to offer them.

Mr. MANSFIELD. Mr. President, I understand debate can be concluded within 50 minutes, and that a vote will then follow.

The PRESIDING OFFICER. Without objection, the request of the Senator from Montana is agreed to.

Does the Senator from Montana desire that the time for the quorum call be charged?

Mr. MANSFIELD. Yes, equally.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that further proceedings under the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KEFAUVER. Mr. President, this bill is very important. It is somewhat technical, but every section, every line, every word has been hammered out and considered by the distinguished Antitrust Subcommittee of the House Judiciary Committee under the leadership of its able chairman, Representative CELLER, and by the Judiciary Committee of the Senate.

It has been studied for a long time by the Bar Association of the City of New York, which strongly recommends the bill, by the American Bar Association, and by the Department of Justice who also strongly support this bill.

Although the bill we are considering does not arouse much public interest, it is one of the most important bills that will have been considered in this session of the Congress.

If enacted—and I think it will be, if it is limited to the amendments which have been recommended by the Senate Judiciary Committee—I think it will be one of the most important accomplishments of this Congress.

In the beginning I wish to pay tribute to the House committee, and particularly to its chairman, Representative CELLER, who over a period of 3 years has been studying this problem and various bills introduced by him.

I also wish to pay tribute to the bar associations which have been considering the problem, and to the distinguished Senator from New York [Mr. KEATING], who has given it a great deal of study, and whose individual views in the report of the Senate Committee on the Judiciary bring out several questions which are challenging and deserving of consideration. They will, of course, be given consideration at a time which is appropriate.

I know the distinguished senior Senator from Oregon [Mr. MORSE], one of the great constitutional lawyers of the Congress, has studied this problem and been interested in it over a period of many years. His work in connection with the subject has been most worthwhile. I am sure he will have something to say later.

I also commend the distinguished Senator from Colorado [Mr. CARROLL] who has been interested in the problem for several years, and whose Subcommittee on Administrative Practice and Procedure of the Judiciary Committee assisted greatly in improvement of the bill.

I invite attention to the individual views of the Senator from Colorado [Mr. CARROLL], which appear on page 16 of the report by the committee.

I invite the attention of Senators to the excellent hearings held by the Antitrust Subcommittee of the House of Representatives under Representative CELLER, copies of which I believe are available for all Senators. The hearings point out the great consideration which has been given to this problem over the years, the importance of the problem, and the fact that as a result of the study of the subject beginning in 1957 the President of the United States asked for legislation on this subject in his message to Congress transmitted in April of last year.

I read a portion of the message by the President to the Congress at that time, referring to the conflict-of-interest statute.

Five of these statutes were enacted before 1873. Each was enacted without coordination with any of the others. No two of them use uniform terminology. All but one impose criminal penalties. There is both overlap and inconsistency. Every study of these laws has concluded that, while

sound in principle, they are grossly deficient in form and substance.

The fundamental defect of these statutes as presently written is that: On the one hand, they permit an astonishing range of private interests and activities by public officials which are wholly incompatible with the duties of public office; on the other hand, they create wholly unnecessary obstacles to recruiting qualified people for Government service.

The chairman of the committee in the House, Representative CELLER, also pointed out that manifestly the revision of the conflict-of-interest statutes is long overdue, and gave cogent reasons therefor.

We know that, among other things, the President and his predecessors in the office of the Presidency have had a great deal of difficulty in obtaining specialized and knowledgeable assistants on a part time or consultant basis to help in the governmental operations and the administration of matters highly important to the United States.

I also invite attention to the comprehensive hearings held by the Senate Judiciary Committee on June 21 of this year, at which time a number of Senators and Representatives along with bar association officials. The Attorney General was represented by Mr. Katzenbach who testified at length, as did the Senators from New York [Mr. JAVITS and Mr. KEATING] and several others.

Mr. MORSE. Mr. President, will the Senator yield for a few brief comments?

Mr. KEFAUVER. I am happy to yield to the distinguished senior Senator from Oregon.

Mr. MORSE. I commend the Senator from Tennessee [Mr. KEFAUVER] and the Senator from New York [Mr. KEATING] for the leadership they have shown in connection with the bill now before the Senate. I believe it was in 1947 that I first introduced public disclosure bill, which would have been binding upon all Members of Congress and upon all Federal employees receiving salaries of \$10,000 or more a year.

In essence, my public disclosure bill would require such public officials, including Members of Congress, to disclose once each year to the public all sources of their income and all amounts of their income.

I have spoken many times on this subject during the past 15 or so years. The RECORD will speak for itself.

I ask unanimous consent that at the close of the speech by the Senator from Tennessee, or at some other appropriate place, I may have printed in the RECORD a synopsis, in chronological order, of the proposed legislation I have introduced on this subject over the years, and a digest of my views on it.

The PRESIDING OFFICER. Is there objection to the request by the Senator from Oregon? The Chair hears none, and it is so ordered.

(See exhibit 1.)

Mr. KEFAUVER. Will the Senator permit that to be printed following the remarks by various Senators about the bill?

Mr. MORSE. Yes. That is what I requested. My bill, now pending in the Senate, is S. 165. I also ask unanimous

consent that it be printed along with the material I have obtained permission to insert in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. MORSE. Mr. President, if my friend from Tennessee and my friend from New York will permit, I wish to say that I have taken the position that we, as public officials in the legislative branch of the Government, should disclose this information because, the voters of this country are entitled to know our sources of income and the amounts of our income, including gifts. If we do not wish to live in a glass bowl we should not enter politics.

If we are to keep the streams of democracy unpolluted from undue influences, from bribery, from "bought" politicians, the public is entitled to know all the facts in regard to the politicians so far as their economic resources are concerned.

I have never varied from this position. I think this principle should be enacted into law.

As brought out in the committee report before the Senate, that is not the only conflict of interest which may arise in public service, because conflicts of interest may arise as a result of Members of Congress, in effect, being lobbyists on the floors of both Houses of Congress. That is a sordid thought. It is an ugly thought; but it is a reality.

That is what happens time and time again when proposed legislation is before the Congress and an investigation of the background, the economic connections, the business connections, and the professional connections of some Members of the Congress shows that they are really parties in interest in connection with proposed legislation. They ought to disqualify themselves.

Yet, as we go back through the record of the Congress, we find that it is a rarity when a Member of Congress stands up and asks to be excused from voting on a question. In my 18 years I have seen proposed legislation before the Senate in regard to which some Senators should never have voted, and in support of which they should never have uttered a syllable from their lips. Yet here on the floor of the Senate, in effect, they have been the most effective lobbyists that the proponents of some proposed legislation have had.

As a result of that action I have always despaired. It has always saddened me. I do not think it is in keeping with the maintenance of the clean stream of Government. In my judgment they should not even participate in debate in regard to any question with respect to which they have a financial interest.

I close with the statement that it is too late in the present session for us to engage in a long discussion of this subject. Although I heartily support the proposed legislation, in my judgment it does not go far enough.

Next January, if the voters shall have sent me back to the Senate—and I have every confidence that they will send me back—I shall introduce proposed legislation that will seek to do a purifying job on this problem. The American peo-

ple are entitled to have the question determined once and for all, for in my judgment no politician has the right—the moral right, at least—to proceed to criticize wrongdoers outside the Government for seeking to pollute the stream of democracy if they themselves fail to keep not only their hands clean, but their whole bodies clean, so far as the body politic is concerned. We shall not do so unless we rid the Halls of Congress and the administrative branch of the Government of any and all conflicts of interest.

Mr. KEFAUVER. Mr. President, the Senator from Tennessee appreciates the remarks of the senior Senator from Oregon, and in general agrees with him. I am aware that over a period of 18 years the Senator has fought hard for a code of ethics for Members of Congress in relation to a conflict-of-interest statute, which would be a guide to Members of Congress and those in the executive agencies in respect to the matters about which he has spoken. Such legislation is long overdue, not only with respect to the executive agencies, but also as to Members of Congress.

The Senator from New York [Mr. KEATING] has some amendments pending. I can only say in that regard that the amendments that have been submitted to the House bill are largely technical amendments. We have reason to believe that if today amendments are added to the bill which have not been the subject of hearings in the House committee and in the Senate, the whole bill will be imperiled and probably no bill on the subject will be passed. So it is imperative that the bill be passed in its present form.

I know that shortly the Senator from New York will further explain his recommendations, which are in line with the recommendations of the Senator from Oregon, and which I wish to join in recommending and sponsoring. They provide that there shall be a joint House-Senate Committee on Ethics, or an enlargement of the authority of the Senate Committee on Rules and Administration, to consider the very problem about which the Senator from Oregon has spoken in connection with Members of Congress.

I hope and feel that such action will be taken at the next session of Congress. I am sure the Senator from Oregon will agree with me, however, that the problem in connection with Members of Congress is intricate and difficult. To reach a correct decision would not be as easy as in connection with those in the administrative agencies. It involves such questions as whether a Senator who owns a farm should vote on farm legislation.

Mr. MORSE. At times I have asked to be excused from voting.

Mr. KEFAUVER. All kinds of difficulties might arise. But it is high time that there be a rule of ethics or a change in the conflict-of-interest statutes to deal with Members of Congress. Of course, they are already dealt with in two provisions of the conflict-of-interest laws, but these are not adequate to cover the problems, I readily admit.

Mr. MORSE. Mr. President, will the Senator yield?

Mr. KEFAUVER. I yield.

Mr. MORSE. I wish to make two statements. First, the Senator has raised question as to whether a Senator who owns a farm should vote on an agricultural bill as a result of which he could obtain some economic assistance if the bill were passed. In my judgment, whenever such a question arises, such a Senator should be excused from voting. On one occasion—and the only occasion on which the issue arose in regard to the agricultural pursuits, the senior Senator from Oregon did exactly that.

Mr. KEFAUVER. I recall that the Senator did.

Mr. MORSE. I think that is exactly what a Senator should do. We ought to accept the bill today.

We should pass the bill. It is the best we can do in the closing hours of the present session. I think it is perfectly clear that if we encumber the bill with amendments, we shall have no bill. We should accept the bill. Then when we return in January, the Senator from Tennessee [Mr. KEFAUVER], the Senator from New York [Mr. KEATING], the Senator from Oregon and other Senators who share our point of view should join in the introduction of additional proposed legislation that would improve the situation beyond the point provided in the pending bill.

Mr. KEFAUVER. I agree with the Senator from Oregon. With the support and help of the Senators from New York [Mr. JAVITS and Mr. KEATING] and many others who are interested, I am sure something can be started and accomplished.

Mr. YARBOROUGH. Mr. President, will the Senator yield?

Mr. KEFAUVER. I yield to my very distinguished friend the Senator from Texas.

Mr. YARBOROUGH. I commend the distinguished senior Senator from Tennessee for his position on this issue, as on so many other issues presented to the Senate at this session and past sessions, but this session in particular. I cite the drug bill, the pace satellite communications bill, and many other bills upon which he has rendered such notable service to the people of the United States.

Mr. KEFAUVER. In connection with the space communications satellite bill, I must say that we did not get the best possible bill.

Mr. YARBOROUGH. Yes, but the Senator performed a commendable service to the public in bringing to the attention of the American public what was being done.

I point out to the distinguished Senator from Tennessee that we in the commerce committee inserted a sentence in the space communications bill that, I think, will save the people of our country much money in the future. That sentence provides that Congress reserves the power to amend or repeal the law. Of course, that power is inherent in Congress, anyway; but the express provision in the space communications bill is a warning to those who received spe-

cial giveaways under the bill, that they cannot obtain any vested right under the measure to continue to receive that giveaway.

The distinguished Senator from Tennessee has rendered many notable services in this body to the American people. In noting his work in connection with the pending legislation to eliminate corrupt practices, I commend him for his work on the pending measure, as well as on all proposed legislation in the Congress in which I have mentioned.

Mr. KEFAUVER. The Senator is very generous. I do not deserve what he has said.

Mr. YARBOROUGH. I have one question of the distinguished Senator from Tennessee. On page 14 of the report, under the heading "Salary of Government Officials and Employees Payable Only by United States," the following statement appears:

SECTION 209. SALARY OF GOVERNMENT OFFICIALS AND EMPLOYEES PAYABLE ONLY BY UNITED STATES

Section 209 is similar to title 18, United States Code, section 1914. The latter prohibits a Government employee from receiving any salary in connection with his Government services from a private source. Subsection (a) of section 209 would reenact this prohibition in substance and, in addition, would make it an offense for anyone to make a payment to a Government employee the receipt of which would violate the section.

The present statute's ban on the receipt of private payments "in connection with" an employee's Government services is replaced in section 209(a) with a ban on the receipt of such payments "as compensation for" such services. The new language is more precise in expressing what is clearly intended by the present broad phrase.

This is my question of the Senator from Tennessee. Does not that language in this bill relax the prohibition in the law instead of tightening it? The present law provides that a Government employee is prohibited from receiving any private payments "in connection with" his services. That language is being changed so as to prohibit him from receiving any payments "as compensation for such services."

Let us suppose, for example, that a public officer says he cannot stay in Washington on a salary of \$15,000 or \$20,000 a year, and a private business offers to supplement his income by paying him X number of dollars to enable him to stay in Washington. Suppose some governmental official should decide he cannot work for the governmental salary and a private business interest does offer to supplement his pay by \$5,000 a year or any other sum of money. The present law provides that a Government employee cannot receive private payments in connection with his employment. The amendment says he may not receive payments "as compensation." My question is: Does not this language relax the restriction in present law?

Mr. KEFAUVER. It is probably unfortunate that we did not allow more time in which to discuss the bill. The time is very short. The bill does not relax present law in this respect. The intention is to clarify it.

Mr. YARBOROUGH. That is what I wanted to have assurance on from the Senator from Tennessee.

Mr. KEFAUVER. On the contrary, it strengthens present law in some ways.

Mr. YARBOROUGH. That is my basic question, really. I congratulate the Senator from Tennessee in strengthening this law. Strengthening was needed.

Mr. KEFAUVER. It does establish a special rule with respect to temporary employees in connection with such a situation to protect such employees from running afoul of the conflict of interest statute where the public's protection does not require it.

Mr. YARBOROUGH. I wanted to have that made clear.

The PRESIDING OFFICER. The time of the Senator from Tennessee has expired.

Mr. KEFAUVER. May I have a little more time? Will the Senator from New York yield me 2 minutes?

Mr. KEATING. I am afraid that all my time has been committed. However, I ask unanimous consent, with the cooperation from the majority leader, that the Senator from Tennessee may have 5 additional minutes.

Mr. RUSSELL. Mr. President, reserving the right to object, we seem to be trying very hard to discuss in a very limited time, a subject that seems to me to be of great importance. I have a question that I desire to propound also, before we vote on the bill.

Mr. KEATING. I am agreeable to any provision with respect to additional time.

Mr. RUSSELL. I would suggest that the Senator ask for 10 additional minutes. I have a question that I should like to ask.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the time may be extended by 10 minutes, and that enough time be allotted to allow the Senator from Georgia to ask his questions.

The PRESIDING OFFICER. Is there objection?

The Chair hears none, and it is so ordered.

Mr. KEFAUVER. I am happy to yield to the Senator from Georgia.

Mr. RUSSELL. I notice that the bill contains section 206, which applies to retired officers of the uniformed services. This is the first time that the bill has come to my attention. Are retired officers exempted from any penalties? Is that all that the bill does in that respect?

Mr. KEFAUVER. This question was considerably discussed in committee. Generally speaking, the section does not change the present law applicable to retired officers.

Mr. RUSSELL. The present law is left as it is?

Mr. KEFAUVER. Yes. That is subject to study next year.

Mr. RUSSELL. The Senator believes the provision is adequate. One of the things that has impressed me most in this situation has been the fact that men may retire from high positions in the armed services and then accept positions with private industry and sell to the men who were their aides—perhaps majors or men

holding lower rank—while they were four-star generals in the service. I believe that part of the law is capable of more abuse than many others parts, much more than in the case of a civilian employee leaving Government employment.

Mr. President, the Committee on Armed Services recently conducted hearings on the conflict of interest laws applicable to retired military personnel as they relate to the forfeiture of retired pay if they engage in selling activities during retirement. The committee voted to repeal the present provisions making Navy and Marine Corps officers subject to a forfeiture of retired pay if they engaged in selling to their departments at any time after retirement. At the same time, the committee increased from 2 to 3 years the provisions applicable to all services which make retired officers subject to a forfeiture of retired pay if they engaged in selling to any Department of Defense activity subsequent to 3 years after retirement.

During these hearings it appeared that little was being done in the executive branch to enforce section 281 of the Criminal Code, which makes retired officers subject to criminal penalties if they engage in certain selling activities to their own department at any time after retirement.

It appeared that only the Comptroller General was making an effort to review this matter that is so capable of abuse and violation.

I would like to insert into the record at this point, first, those portions of the committee report which deal with the reasons why retired military personnel are accorded different statutory treatment from other categories of persons, and second, that part of the report dealing with the committee's observation on the lack of enforcement in the executive branch of section 281 of the Criminal Code as it relates to military retired personnel.

The committee report emphasizes that its action on the forfeiture bill should in no way be construed as supporting a change in the present language of section 281. On the contrary, the committee observed that the present provisions could possibly be better enforced.

[Excerpts from Senate Report No. 1979, 87th Congress, Aug. 29, 1962]

BASIS FOR THE STATUTES INVOLVED

For many years these statutes have provided prohibitions against procurement activities of retired officers who are employed in private industry subsequent to their active service. Originally, the prohibited procurement activities applied only to the department in which the officer held a retired status. In 1952, however, in the provision mentioned above, the prohibited activities were extended so that a retired regular officer was not only prohibited from selling to the department from which he retired, but to all agencies of the uniformed services, for a period of 2 years following retirement.

The basic purpose of these conflict-of-interest provisions for retired military officers, which are more strict than those applicable to other categories of personnel, is to prevent the use of personal influence on the part of retired officers in connection with the procurement of supplies and war

materials between the military agencies and the private contractor who employs the retired officer.

Some of the factors that might give rise to conflict-of-interest situations include associations while on active duty with those former subordinates who remain in active service, the prestige generally of those who served in high rank on active duty, possible close knowledge of the military department by the retired officer, and possibly the continued association between the retired officer and the service from which he is retired. Although the basic statutes were enacted some years ago, the need for a continued rule is underscored by the fact that retired officers now are employed by the hundreds in defense industry, and the fact that the Defense Department undertakes procurement actions totaling billions of dollars, much of which is on a negotiated basis.

It should be emphasized that the sense of integrity on the part of the overwhelming majority of the retired officers would preclude any violations of the statutory provisions. These provisions, however, do serve as a deterrent for the few who might be tempted and a penalty for the few who might actually violate the provisions.

The committee would like to emphasize that the prohibited activities relate only to the selling process. They do not affect retired officers who act either for themselves or for others in various nonsales positions, including executive, administrative, and technical positions. The skills and talents of retired officers may be fully utilized in activities not connected with the selling process.

COMMITTEE OBSERVATION ON SECTION 281, TITLE 18, UNITED STATES CODE

Another important provision relating to conflict of interests of retired officers is section 281, title 18, United States Code, to which reference has already been made. The Committee on Armed Services does not have jurisdiction over the U.S. Criminal Code, although this committee does have legislative jurisdiction generally over the retired military officers who are subject to the criminal provision.

Testimony before the committee indicated that although the Comptroller General had found violations in a number of cases under the provisions involving forfeiture of pay, none of these cases was referred by the Department of Defense to the Department of Justice for the purpose of examining possible violations of section 281, title 18. It would appear that consideration could be given in the executive branch to improving the procedures and coordination by the Department of Defense and the Department of Justice with respect to the matter of reviewing possible violations of this provision.

With respect to the meaning of section 281, the Department of Justice, which is charged by statute with the responsibility for interpreting the law as it applies to the executive branch, has indicated that retired officers are within the scope of section 281. Furthermore, the Department of Defense regulation 5500.7, in enclosure 3, page 3, states the following with respect to this provision:

"a. 18 U.S.C. 281 exempts retired officers not on active duty from its application, but it prohibits a Regular retired officer from representing any person in the sale of anything to the Government through the Department in whose service he holds a retired status."

The Air Force regulation AFR 30-30, section 16b, page 5, states that: "no Regular retired Air Force officer will sell, contract for the sale of, or negotiate for the sale of anything to the Air Force at any time."

The statutory basis for this rule after such an officer has been retired for more than 2 years is section 281, title 18, United States Code.

NO INTENT TO AFFECT SECTION 281, TITLE 18

The committee would like to emphasize that its action in recommending this bill should not be construed in any way, by intent, implication, or otherwise, as meaning that section 281 should be amended to reduce its scope, either in terms of limiting the prohibited procurement activities, or by limiting the period following retirement to which the provision applies.

Mr. KEFAUVER. I recognize the abuses in this area and I feel it should be dealt with specifically. In at least one respect the present law applicable to such officers is changed by this bill. Under section 207 if they are working on a particular matter for the armed services, they cannot leave that employment and later participate in the same matter in civilian life. That prohibition is for life, not merely for 2 years, which is the provision at the present time. In some other respects, I believe the general provisions of 207 will also change the present status of retired officers.

Mr. RUSSELL. I say to the Senator that the Committee on Armed Services surrendered jurisdiction in these areas to the Committee on the Judiciary several years ago, because it involves criminal penalties. I hope that this matter will not be entirely overlooked and not considered by the Judiciary Committee in the writing of appropriate legislation. I assumed, when we surrendered jurisdiction to the Committee on the Judiciary, that that committee would at least take cognizance of the possibility of this abuse.

Mr. KEFAUVER. The Committee on the Judiciary has discussed the matter. It does recognize that this problem exists, and should be dealt with by legislation. I assure the Senator that there will be a strong effort made in the next Congress to bring that about. But we now are confronted with the situation if we substantially change the bill, that we will get no law this year. There are certain matters of near emergency nature which should be dealt with now.

Mr. RUSSELL. Does the Senator intend to review the matter in the next session of Congress?

Mr. KEFAUVER. As the Senator knows, I am only a very minor member of the Committee on the Judiciary. To the extent of any influence that I may have, the subject will be reviewed and something will be done about it.

Mr. RUSSELL. I do not agree with the Senator's estimate of himself. It should be stated in justice that he is a powerful member of the Committee on the Judiciary, and is the chairman of some of the most active subcommittees of that committee, which range into a great many areas. On the assurance that the Senator has given me, I shall not offer any amendment to the bill. However, I cannot refrain from expressing my disappointment that the Committee on the Judiciary has not dealt with what I regard as one of the most important conflict-of-interest areas in the Government.

Mr. KEFAUVER. I agree with the Senator from Georgia that it is a matter that must be dealt with affirmatively.

Whatever I am able to do will be done.

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. KEFAUVER. I yield.

Mr. MANSFIELD. I am certainly in complete and full accord with what the distinguished chairman of the Committee on Armed Services has had to say on this matter. I am heartened, despite the fact that this bill does not go far enough, by the statement of the Senator from Tennessee, to the effect that a study will be inaugurated early next year. I should like to ask the distinguished Senator from New York [Mr. KEATING], if I may, if he would express his views on this particular matter.

Mr. KEATING. I feel very strongly that the bill does not go far enough, and that we cannot leave it the way it is, or leave the matter with this bill. As the Senator will note from the individual views that I filed, dealing with Members of Congress, we should do something about the conflict-of-interest situation of Members of Congress. I agree with the Senator from Georgia that I hope something will be done about it. If we are not going to do anything about it, then we should let the committee of the Senator from Georgia do something about it, to take up this problem of conflict of interest of retired officers.

Mr. RUSSELL. I hope, if the Judiciary Committee should abandon this field, it will give the Committee on Armed Services some notice of that fact. Some years ago we started to deal with this subject, and the Committee on the Judiciary protested. I agreed with the committee. Under the Reorganization Act, this matter was clearly within the jurisdiction of the Judiciary Committee. I have advised persons who have written to me about it that the matter was in the jurisdiction of the Committee on the Judiciary. Therefore, I hope that the committee will deal with the subject and hold hearings on it and pay some attention to it, because in my opinion it is one of the most important areas in the conflict-of-interest field.

While I am not impugning anyone's motives, this situation is certainly susceptible to more abuse than any other conflict-of-interest area in the Government.

Mr. KEFAUVER. I again assure the distinguished Senator from Georgia that I fully agree with him that this is one of the bad abuses. This is a House bill, and we hope to make only amendments which will be accepted by the House without the necessity of a conference. We have been informed that if new subject matter makes it necessary to have a conference, the whole bill may be defeated.

The principal object of H.R. 8140 is to improve the current conflict of interest laws, most of which were first enacted in the 19th century. As now written, they are confusing, inadequate in certain respects, too sweeping in other respects and, in general, fail to meet the needs of present-day Government. The shortcomings of these statutes have been pointed out in recent years by various committees of the Congress, by the execu-

utive branch and by organizations of the bar. Each of these groups has found the underlying principles of the statutes to be sound but has at the same time noted the need for their revision in the interests of clarification and modernization.

This bill embodies the most important of the recommended changes in present law which were submitted by the President with his special message of April 27, 1961, on conflicts of interest and standards of conduct in the Government. In addition to the support of the administration, the bill has the support of the American Bar Association and the Association of the Bar of the City of New York. The New York City Association made an invaluable report in 1960 on the subject of the Federal conflict of interest laws and many of its recommendations have been written into the bill. Every witness who appeared at the hearings held by the Senate and House Judiciary Committees favored the enactment of the bill. As far as I know, no opposition to it has been voiced from any quarter. Although the Judiciary Committee made a number of amendments, I have no doubt they are acceptable to the House of Representatives.

The bill has three main purposes in connection with the conflict statutes:

First, it strengthens certain of them by increasing the range of the Government matters in which activities giving rise to conflicts of interest are prohibited. As a result of judicial construction these statutes are presently regarded as prohibiting activities in connection with "claims against the Government" for money or property only. The bill would extend their scope to include the vast range of administrative proceedings and other similar matters which comprise a great part of the work of the Government departments and agencies today.

The bill also strengthens present law by imposing a permanent bar, rather than the present 2-year bar, against a former Government employee's representing a private party in connection with a specific matter in which the former employee had participated personally while working for the Government.

The second main purpose of H.R. 8140 is to clarify and simplify the existing statutes. It should be noted, however, that in certain respects it makes no significant changes. Thus, the two provisions applying to Members of Congress do not make any changes of substance in the corresponding provisions of the present law. One, in section 203 of the bill, prohibits the receipt of compensation by Members of Congress for representing others before the agencies of the Government. The other, section 204, prohibits Members of Congress from practicing in the Court of Claims.

Similarly, the bill leaves untouched the two present sections of the conflicts statutes which pertain specifically to retired officers of the Armed Forces.

The third main purpose of H.R. 8140 is to facilitate the Government's recruiting of skilled persons from private fields to serve it on an intermittent or temporary basis. At the same time, the bill

affords the Government adequate protection against conflicts of interest on the part of such persons. This dual purpose is achieved by creating in section 202 a category of Government employees designated "special Government employees" who are not subject to the full extent of the prohibitions applicable to the ordinary Government employee. This category is composed of employees, whether compensated or not, who serve not more than 130 days during any period of 365 consecutive days either on a full-time or intermittent basis.

Passing now to a summary of the provisions of H.R. 8140, I believe it will be helpful to describe first their impact on the regular Government employee. He would be subject to four major conflict-of-interest restrictions under the bill. He would in general be prohibited from representing any other person in relation to any transaction involving the Government. The regular employee also would be prohibited from participating in a transaction involving the Government in the consequences of which he, his spouse, minor child or business associates have a significant financial interest. Private sources would be prohibited from paying or supplementing his salary for his Government services. Finally, after leaving the Government service, he would be prohibited from representing another person in relation to any transaction involving the Government in which he participated personally and substantially as a Government employee. He would also in general be barred for 1 year following his Government employment from representing anyone in a matter in an area where he had had official responsibility at any time during his last year in the Government.

The special Government employee would be prohibited from representing other persons only, first, in matters involving the Government in which he has participated personally and substantially and, second, if he serves an agency more than 60 days a year, in matters pending before that agency. As to participation in transactions involving the Government in the consequences of which he, his spouse, minor child or business associates have a financial interest, the special Government employee would be subject to the same restrictions as a regular employee. Similarly, the post employment prohibitions applicable to a regular Government employee would apply equally to the special Government employee. However, the latter would not be subject to the restrictions against outside compensation applicable to the regular employee.

A secondary purpose of H.R. 8140, is to consolidate into a single section—section 201—of Governmentwide applicability the gist of the various existing bribery statutes which apply separately to particular categories of Government officials and to jurors and witnesses (18 U.S.C. 201–213). This consolidation makes no significant changes of substance and would not narrow the broad sweep of the current bribery laws.

Finally, the bill would add to "any other remedies provided by law," an authorization for the Government to

void any contract or other transaction in relation to which there has been a final conviction under the bribery or conflict-of-interest statutes.

H.R. 8140 is the result of years of discussion and study, and its provisions are endorsed by the experts in the fields it covers. It is designed to promote the public interest by affording the Government the protection it requires and simultaneously making it possible for the Government to obtain services it requires. The need for the bill is undisputed, and I urge that it be passed by the Senate promptly in order to permit its enactment this session.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD a summary of H.R. 8140 which was prepared by the Department of Justice. It is an excellent analysis of the bill.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

SUMMARY OF H.R. 8140

INTRODUCTION

In general, H.R. 8140—

1. Consolidates into a single section (sec. 201) of Government-wide applicability the gist of the various existing bribery statutes which apply to particular categories of Government officials (18 U.S.C., 201-213).

2. Strengthens certain of the present conflict-of-interest statutes by increasing the range of the Government matters in which activities giving rise to conflicts of interest are prohibited. As a result of judicial construction these statutes are presently regarded as prohibiting activities in connection with "claims against the Government" for money or property only. The bill would extend their scope to include the vast range of administrative proceedings and other similar matters which comprise a great part of the work of the Government departments and agencies today.

3. Facilitates the recruiting of skilled personnel to serve the Government on an intermittent or temporary basis. Many individuals possessing the special skills and knowledge required intermittently or temporarily by the Government are engaged in private activities which are such that they would, under the existing conflict-of-interest laws, be required to give up those activities in order to serve the Government merely on an intermittent, consultative or purely advisory basis. The bill, while protecting the interests of the Government, would modify existing law to permit such service in many cases without the present drastic consequences.

4. Clarifies and simplifies the existing conflict-of-interest laws.

In connection with the conflicts provisions of the bill, it is helpful to observe at the outset that:

(a) In dealing with the problem of the intermittent or temporary consultant or adviser, the bill (sec. 202) creates a category of Government employees designated "special Government employees" who are not subject to the full extent of the prohibitions applicable to the ordinary Government employee. This category is composed of temporary employees, whether compensated or not, who serve not more than 130 days during any period of 365 consecutive days either on a full-time or intermittent basis.

(b) The bill includes District of Columbia employees within its scope.

(c) Only two sections apply to Members of Congress and they make no significant changes in the comparable two sections of the present law. One section (sec. 203) prohibits Members of Congress from represent-

ing others before the agencies of the Government. The other section (sec. 204) prohibits Members of Congress from practicing in the Court of Claims.

(d) The bill makes no changes with respect to retired officers of the Armed Forces.

ANALYSIS

The regular Government employee would be subject to four major conflict-of-interest restrictions under the bill. He would in general be prohibited from representing any other person in relation to any transaction involving the Government. The regular employee also would be prohibited from participating in a transaction involving the Government in the consequences of which he, his spouse, minor child, or business associates have a significant financial interest. Private sources would be prohibited from paying or supplementing his salary for his Government services. Finally, after leaving the Government service, he would be prohibited from representing another person in relation to any transaction involving the Government in which he participated personally and substantially as a Government employee. He would also be barred for 1 year following his Government employment from representing anyone in a matter in the area where he had official responsibility during his last year in the Government.

The special Government employee would be prohibited from assisting other persons only in (1) matters involving the Government in which he has participated personally and substantially, and (2) if he serves an agency more than 60 days a year, matters pending before that agency. As to participation in transactions involving the Government in the consequences of which he, his spouse, minor child, or business associates have a financial interest, the special Government employee would be subject to the same restrictions as a regular employee. Similarly, the postemployment prohibitions applicable to a regular Government employee would apply equally to the special Government employee. However, the latter would not be subject to the restriction against outside compensation applicable to the regular employee.

Finally, the bill would add to "any other remedies provided by law," an authorization for the Government to void any contract or other transaction in relation to which there has been a final conviction under the bribery or conflict-of-interest statutes.

Mr. KEFAUVER. Mr. President, I ask unanimous consent also to have printed at this point in the RECORD an appendix to the statement of Deputy Attorney General Katzenbach on H.R. 8140 before the Senate Committee on the Judiciary. It was inadvertently omitted from the printed hearings.

There being no objection, the appendix to the statement was ordered to be printed in the RECORD, as follows:

APPENDIX TO STATEMENT OF DEPUTY ATTORNEY GENERAL NICHOLAS DEB. KATZENBACH ON H.R. 8140 BEFORE THE SENATE COMMITTEE ON THE JUDICIARY, JUNE 21, 1962

PROPOSED AMENDMENTS TO H.R. 8140, AS PASSED BY THE HOUSE OF REPRESENTATIVES AND INTRODUCED IN THE SENATE

Insert the word "voluntarily" after the word "is" in page 8, line 4, and insert the following sentence after the period in page 8, line 8: "A Reserve officer of the Armed Forces or an officer of the National Guard of the United States who is serving involuntarily shall be classified as a special Government employee."

2. Strike the following from page 10, lines 10 and 11, and page 12, lines 7 and 8: "which is or within two years has been a subject of his official responsibility, or (3)"

Substitute the following for each of the provisos beginning at page 10, line 13, and page 12, line 10:

"Provided, That clause (2) shall not apply in the case of a special Government employee who has served in such department or agency no more than sixty days during the immediately preceding period of three hundred and sixty-five consecutive days."

Strike the number "203" from page 8, line 12.

3. If section 207(c) is omitted, the following conforming amendments should be made in page 16, line 18:

Change the word "subsections" to "subsection" and strike the words "and (d)".

4. During a preliminary consideration of H.R. 8140 by the Senate Judiciary Committee in September 1961, a committee member suggested that persons acting as part-time consultants or advisers in the legislative branch be made eligible for inclusion in the category of "special Government employees." This result may be accomplished by inserting the words "or legislative" after the word "executive" in page 7, line 13.

5. The words "particular matter" appear at a number of places in the bill, including the following: line 5, page 10; line 2, page 12; line 12, page 14; line 25, page 14.

The words are used in these four places in connection with prohibitions against certain activities on the part of special Government employees or former Government employees. The words are there intended to limit the prohibitions to proceedings of a nature involving specific parties as distinguished from proceedings such as general rulemaking. In order to make this differentiation clear, the administration proposes the insertion of the words "involving a specific party or parties" immediately after the words "particular matter" in each of the four places listed above.

6. Section 207(a) as originally drafted for consideration by the House Judiciary Committee made it unlawful for a former Government employee to act "as agent or attorney for, or aid or assist" other persons in connection with matters in which the United States has an interest and in which he had participated during his Government service. The committee reduced the reach of this section by striking the words "or aid or assist". However, it failed to make corresponding changes in the three paragraphs in section 205 (beginning at page 12, line 14, and ending at page 13, line 14) which use the words "aid or assist" or "aiding or assisting." These terms do not appear elsewhere in section 205 or the remainder of the bill. In order to avoid problems of construction and to make the language of sections 205 and 207(a) completely consistent, it is recommended that the above-mentioned three paragraphs be amended. In addition, it would be appropriate to include grants within the authority given to agency heads by the third paragraph. Set forth below is a proposed revision of the paragraphs accomplishing these results and making a few other minor changes, including the deletion of a confusing reference to section 207 in the third paragraph:

"Nothing herein prevents an officer or employee, if not inconsistent with the faithful performance of his duties, from acting without compensation as agent or attorney for any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings.

"Nothing herein or in section 203 prevents an officer or employee, including a special Government employee, from acting, with or without compensation, as agent or attorney for his parents, spouse, child, or any person for whom he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except in those matters in which he has participated personally and sub-

stantially as a Government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which are the subject of his official responsibility, provided that the Government official responsible for appointment to his position approves.

"Nothing herein or in section 203 prevents a special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with or for the benefit of, the United States provided that the head of the department or agency concerned with the grant or contract shall certify in writing that the national interest so requires."

7. In the interest of conformity, the words "Government action, proceeding" in page 17, line 3, and "action, proceeding" in page 17, line 15, should be deleted and replaced by the following language which appears in several places in the bill: "judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest,".

8. In the event section 207(b) is retained in the bill, the discussion and recommendation appearing below will be pertinent.

Section 207(b) imposes a 2-year ban against a former Government employee's appearance before a court or Government agency as agent or attorney for another in connection with any matter which was under his official supervision at any time within 2 years prior to his departure from the Government. As drafted, this section might impose an unduly long restriction in the case of a former employee who has served the Government in more than one agency. For example, an officer of the Treasury Department transfers to the State Department, remains 23 months and then resigns to accept private employment. He would be barred for 2 years thereafter from appearing as to matters under his official responsibility not only in the State Department but in the Treasury Department, which he had left 23 months before. It would obviously be unfair to bar him from the Treasury Department as to such matters for more than an additional month. Accordingly, the following amendments are proposed to prevent that result: delete the word "last" in page 14, line 20, and replace the last two words in page 15, line 5, with the words "such responsibility".

Mr. KEFAUVER. Mr. President, the report on the bill has been excellently prepared, particularly as regards the individual views of the Senator from Colorado [Mr. CARROLL] and the very thoughtful and provocative questions raised in the report by the individual views of the Senator from New York [Mr. KEATING]. I ask unanimous consent to have printed at this point in the RECORD excerpts beginning on page 4 of the report, together with the individual views of Senator CARROLL and Senator KEATING.

There being no objection, the excerpts were ordered to be printed in the RECORD, as follows:

PURPOSE OF AMENDMENTS

The purpose of the amendments is to correct typographical errors, and conform and clarify language in the bill, to incorporate suggested amendments proposed by the Department of Justice during the course of the public hearing on this proposal, and to incorporate language adopted by the committee affecting part-time U.S. commissioners and part-time legislative employees in the home districts and States of Members of Congress.

PURPOSE

This legislation is concerned with two subjects, conflicts of interest and bribery, and would revise the current criminal statutes dealing with these subjects.

Insofar as the conflict-of-interest laws are concerned, the bill has two purposes. First, it would simplify and strengthen the conflict laws presently in effect. Second, in the interest of facilitating the Government's recruitment of persons with specialized knowledge and skills for service on a part-time basis, it would limit the impact of those laws on the persons so employed without depriving the Government of protection against unethical conduct on their part.

A secondary feature of the bill is the substitution of a single comprehensive section of the Criminal Code for a number of existing statutes concerned with bribery. This consolidation would make no significant changes of substance and, more particularly, would not restrict the broad scope of the present bribery statutes as construed by the courts.

LEGISLATIVE HISTORY

On April 27, 1961, the President transmitted to the Congress a special message dealing with conflicts of interest and ethical behavior on the part of persons serving in the departments and agencies of the Government. Accompanying the message was a proposed bill to revise the conflict-of-interest laws which was later introduced as H.R. 7139. Two identical bills, H.R. 3411 and H.R. 3412, introduced by the chairman and the ranking minority member of the House Committee on the Judiciary, and H.R. 3050, a bill drafted by the Association of the Bar of the City of New York, also proposed significant changes in the conflict-of-interest laws. H.R. 3411 and H.R. 3412, in addition, contained provisions designed to consolidate the bribery laws. Hearings on the four bills were held June 1 and 2, 1961, by the Anti-trust Subcommittee of the House Committee on the Judiciary. The subcommittee subsequently combined various features of these bills into a new bill, H.R. 8140, which received the support of the administration, the Association of the Bar of the City of New York, and other groups. Following approval by the full committee, H.R. 8140 passed the House on August 7, 1961.

This committee held hearings on the bill on June 21, 1962. Although the committee received a number of recommendations for amendment, all witnesses agreed with the objectives of the bill and unhesitatingly supported its enactment.

STATEMENT

The necessity for maintaining high ethical standards of behavior in the Government becomes greater as its activities become more complex and bring it into closer and closer contact with the private sector of the Nation's economy. The best means of assuring high standards have been a matter of increasing concern in recent years, as evidenced by the work of various committees of the Congress, the executive branch, members of the bar, and others. All of these groups have found that the present laws, while correct in principle, are confusing and inadequate and to a considerable degree are actually a hindrance to the Government. This committee has come to the same conclusion. The consensus of views in this connection is reflected in the following passage from the President's special message of April 21, 1961:

Five of these statutes were enacted before 1873. Each was enacted without coordination with any of the others. No two of them use uniform terminology. All but one impose criminal penalties. There is both overlap and inconsistency. Every study of these laws has concluded that, while sound in principle, they are grossly deficient in form and substance.

The fundamental defect of these statutes as presently written is that: On the one hand, they permit an astonishing range of private interests and activities by public officials which are wholly incompatible with

the duties of public office; on the other hand, they create wholly unnecessary obstacles to recruiting qualified people for Government service. This latter deficiency is particularly serious in the case of consultants and other temporary employees, and has been repeatedly recognized by Congress in its enactment of special exemption statutes.

A serious defect of the statutes arises from the fact that, as construed in *United States v. Bergson* (119 F. Supp. 459 (D.C.D.C., 1954)), they prevent improper activities by present and former Government employees in connection with claims to money or property but do not protect the Government against the same kind of activities when directed to proceedings which are not technically for money or property. Yet the dangers of abuse of Government position and of the unconscionable use of inside information against the Government by a present or former employee are, of course, as great in an administrative or judicial proceeding for the award of a valuable license or other privilege as in a proceeding to obtain the payment of money.

An example of overprotection of the Government's interest, as contrasted with the underprotection just described, is found in title 5, United States Code, section 99, a statute applying to a former employee of an executive department. It prevents him for 2 years after the end of his employment with that department from prosecuting a claim which was pending, during the period of his incumbency, either in that or in any other department, even though he was totally unaware of the claim during that period. Whatever the merit of this prohibition at a time when the Government departments were fewer in number and much smaller in size, it makes very little sense today. Thus, it is hard to advance a reasonable justification for precluding a former Commerce Department attorney, for 2 years or for any length of time, from representing before the Treasury Department a private client who has a claim for an income tax refund with which the attorney never had any connection while in Government service.

In considering the application of present law in relation to the Government's utilization of temporary or intermittent consultants and advisers, it must be emphasized that most of the existing conflict-of-interest statutes were enacted in the 19th century—that is, at a time when persons outside the Government rarely served it in this way. The laws were therefore directed at activities of regular Government employees, and their present impact on the occasionally needed experts—those whose main work is performed outside the Government—is unduly severe. This harsh impact constitutes an appreciable deterrent to the Government's obtaining needed part-time services.

The problem was well stated by the Senate Government Operations Subcommittee on National Policy Machinery in a study dated February 28, 1961, and entitled "Organizing for National Security—the Private Citizen and the National Service":

"The heart of the difficulty lies in the failure of present-day law to recognize the special problems of the occasional consultant.

"To be sure, consultants can in certain conditions be abused by those who would pursue private gain or seek to exert covert and wrongful influence on Government policies. The law and administrative regulations should effectively guard against such abuses. Indeed, we require more precise and sophisticated safeguards than exist presently.

"But the statutes should be refined to deal with the real danger. The intermittent consultant should not be arbitrarily and indiscriminately swept under a network of outdated general restraints serving only to deny

the Government the expert assistance it needs in modern conditions."

An Advisory Panel on Ethics and Conflict of Interest in Government, appointed by the President in January 1961, also considered the problem. This panel, composed of retired Judge Calvert Magruder, of the U.S. Court of Appeals for the First Circuit; Dean Jefferson B. Fordham, of the University of Pennsylvania Law School, and Prof. Bayless Manning, of the Yale Law School, made the following statement in its report, dated March 21, 1961:

"In the present context one of the most significant developments in the Federal personnel system is the great and growing resort to temporary and intermittent personnel. The tremendous range and volume of governmental activities, much of which stems from technological developments and international problems, have brought Government into intimate relationship with the economic life of the Nation and with social welfare, with the result that there are no longer clear boundaries between the private and the public sectors. This means, for one thing, that the National Government has major demands for qualified personnel of the sort needed by business organizations and other private institutions. What the Government must do is compete as best it can for the needed people. Thus, it is readily understandable that in many areas of activity the Government has to make use of people on a limited basis in the capacity of advisers, consultants, or experts. Nor is it likely that the occasion for this practice will lessen. Use of such semiemployees, partly in and partly outside Government, greatly complicates the problem of maintaining ethical standards in the Government for it inevitably multiplies the risks of conflicting interests."

At this date it is no longer open to question that many, if not most, of the departments and agencies find it necessary for the optimum performance of their tasks to make use of the skill, talent, and experience of leaders in the sciences, business, and the professions whose regular work is conducted in private spheres. Today's Government requires the part-time services of thousands of such persons to deal with problems of increasing complexity and scope. It can scarcely be questioned that a satisfactory means must be found of facilitating the employment of these individuals by the departments and agencies, as needed, without relaxing basic ethical standards or permitting actual conflicts of interest.

Congress has on a number of occasions recognized the obstacles faced by an agency requiring the part-time services of consultants and advisers and has granted the persons employed by the agency in that capacity a specified statutory exemption from some or all of the conflict laws. This hit-or-miss practice has produced unjustified inconsistencies and in some cases has resulted in the grant of unduly broad exemptions. Needless to say, general legislation doing away with the need for special treatment is a preferable course of action.

H.R. 8140 is intended to remedy the deficiencies and difficulties discussed above. It is the end result of protracted and careful studies both in and out of government, and this committee is of the view that it will achieve the goal set for it. In so doing, it will promote and balance the dual objectives of protecting government integrity and facilitating the Government's recruitment and retention of needed personnel.

SECTION-BY-SECTION ANALYSIS

Section 1(a) of the bill would amend chapter 11 of title 18, United States Code, by combining into a new section 201 the substance of the present sections 201 through 213 relating to bribery and graft. In addition section 1(a) of the bill would replace

the present sections 281, 282, 283, 284, 434, and 1914 of title 18, all relating to conflicts of interest, with new sections 202 through 209. The renumbering and repeal of sections necessitated by the provisions of section 1(a) are accomplished by section 1(b), (c), and (d) and by section 2.

The following references to sections 201 through 209 and section 218 refer to the proposed new sections of title 18 of which would be enacted by section 1(a) and (e) of the bill.

Section 201. Bribery of public officials and witnesses

The current bribery laws in title 18, United States Code, sections 201-213, consist of separate sections applicable to various categories of persons—Government employees, Members of Congress, judges, and others. Section 201 would bring all these categories within the purview of one section and make uniform the proscribed acts of bribery, as well as the intent or purpose making them unlawful.

Subsection (a) contains definitions for the purposes of the new section 201 only. The term "public official" is broadly defined to include officers and employees of the three branches of government, jurors, and other persons carrying on activities for or on behalf of the Government. The definition of "person who has been selected to be a public official" is self-explanatory. The term "official act" is defined to include any decision or action taken by a public official in his capacity as such.

Subsection (b) makes it unlawful for anyone to bribe or attempt to bribe a public official by corruptly giving, offering, or promising him or any person selected by him, anything of value with intent to influence any official act by him, to influence him to commit or allow any fraud on the United States, or to induce him to do or omit to do any act in violation of his lawful duty. The three alternate intents specified in the subsection are in substance the same as those now prescribed in title 18, United States Code, section 201. The subsection expands present law to a degree in its provisions forbidding an offer or promise of something of value from which a public official himself will not benefit but which will be of advantage to another person in whose well-being he is interested.

Subsection (c) prohibits a public official's solicitation or acceptance of, or agreement to take, a bribe. The same alternate intents are set forth here as in subsection (b).

Subsections (d) and (e) prohibit the offering to, or the acceptance by, a witness of anything of value involving intent to influence his testimony at a trial, congressional hearing, or agency proceeding.

The maximum penalties authorized for convictions under these four subsections are a fine of \$20,000 or triple the monetary equivalent of the thing of value, whichever is greater, or imprisonment for 15 years, or both. In addition a violator may be disqualified, in the discretion of the court, from holding any office under the United States. Title 18, United States Code, section 206 presently makes such disqualification mandatory in cases of conviction for offers of bribes to judges, jurors, or judicial officers and title 18, United States Code, sections 202, 205, and 207 require it in cases of convictions for acceptance of bribes by Government employees, Members of Congress, and judges.

Subsections (f) and (g) forbid offers or payments to, and solicitations or receipt by, a public official or anything of value "for or because of" any official act performed or to be performed by him. Subsections (h) and (i) similarly forbid offers or payments to, and solicitations or receipt by, a witness of anything of value "for or because of" testimony given or to be given by him.

The maximum punishment for a conviction under subsection (f), (g), (h), or (i) is a fine of \$10,000, or imprisonment for 2 years, or both.

Subsection (j) specifies that nothing in subsection (d), (e), (h), or (i) is to prevent the payment or receipt of lawful witness fees, travel and subsistence expenses, or reasonable compensation for expert testimony.

Subsection (k) specifies that the provisions of the section are not to supersede the present statutes making it unlawful to obstruct justice by intimidating or influencing jurors or witnesses.

Section 202. Definitions

This section contains two definitions applicable to the conflict of interest provisions to follow. The first definition, that of "special Government employee," serves to establish a category of intermittent and temporary personnel, as distinguished from regular, full-time personnel. The term is defined to include officers and employees of the executive and legislative branches, independent agencies, and the District of Columbia who are employed, with or without compensation, to perform temporary duties, either on a full-time or intermittent basis, for not more than 130 days in any period of 365 consecutive days. In general, as will be seen hereinafter, the prohibitions of the bill relating to special Government employees are less extensive than in the case of regular employees. Although H.R. 8140, as it passed the House, did not make employees of the legislative branch eligible for classification as special Government employees, this committee sees no reason for omitting them and has amended section 202 accordingly.

In addition the committee has amended the section to classify a part-time home representative of a Member of Congress as a special Government employee even though his service exceeds the 130-day standard. Part-time local representatives, though generally rendering fairly frequent service, rarely spend more than a small part of any day on business of the Member they assist, and it would be unfair and unrealistic to treat them as regular, full-time employees if they exceed that standard.

The provisions of H.R. 8140, like the provisions of the present conflict-of-interest laws, apply in general to officers of the Armed Forces on active duty. Section 202 provides that a Reserve or National Guard officer on a tour of active duty solely for training shall be classified as a special Government employee. As it passed the House, section 202 also provides that every Reserve or National Guard officer who is serving a period of extended active duty in excess of 130 days shall be classified as an officer subject to the full impact of the bill rather than as a special Government employee. No distinction is made between Reserve and National Guard officers who are serving pursuant to an involuntary recall to duty and those who are serving voluntarily. This committee is of the opinion that it is not equitable and may cause unjustified hardship to subject the former to all the prohibitions applicable to the general run of officers and employees of the Government. Accordingly, the committee has amended section 202 to classify an involuntarily recalled Reserve or National Guard officer as a special Government employee during the whole of his period of involuntary service—that is, even if it extends beyond 130 days.

Enlisted members of the Armed Forces are specifically excluded by section 202 from the coverage of the conflict-of-interest statutes.

Finally, section 202 defines the term "official responsibility" as the direct administrative or operating authority to approve, disapprove, or otherwise direct Government action.

Section 203. Compensation to Members of Congress, officers, and others in matters affecting the Government

This section is proposed as a substitute for title 18, United States Code, section 281, which prohibits Members of Congress and officers or employees of the Government from receiving compensation for services rendered for others before a Federal department or agency in matters in which the Government is a party or is interested. Section 203 of the bill continues this restraint in full effect except with respect to special Government employees. Subsection (c) makes the prohibition applicable to those individuals only in relation to (1) matters in which they have at any time participated personally and substantially in their governmental capacities or (2) matters pending in the department or agency in which they serve. However, the second restriction would not apply in the case of a special Government employee who has served in such department or agency no more than 60 days during the preceding period of 365 days.

The House bill set 15 days' service in a year as the maximum which would leave the bar of the second restriction at rest. The committee recognizes that an intermittent or temporary consultant or adviser may attain a considerable degree of influence in an agency he serves and that the second restriction is a reasonable one in principle. However, the 15-day limit seems much too short and no doubt would often make unavailable to an agency the needed services of an individual with specialized knowledge or skills who must appear before that agency in other connections in his private capacity. The 60-day standard set by the committee seems a more reasonable one, particularly when it is borne in mind that the first restriction applicable to special Government employees continues in effect in any event. It will, of course, remain incumbent on each agency to make certain that persons serving it part time who also appear on behalf of outside organizations do not abuse their access to the agency for the benefit of those organizations.

The House bill contains a provision in subsection (c) of section 203 subjecting a special Government employee to the prohibition of the section in relation to a matter which is, or within 2 years has been, a subject of his official responsibility. This provision also seems to be directed at the improper use of influence. As a practical matter, however, the problem of influence would seem to be dealt with best in the manner indicated in the next preceding paragraph—that is, by agency watchfulness and regulation. And, with the unceasing application of the above-mentioned first restriction preventing private appearances by a special Government employee in relation to matters he has worked on for the Government, it seems clear that the Government is well protected. Taking into account also the likelihood that the additional House restriction might well be an impediment to recruitment, the committee has omitted it.

Section 203 provides the same penalties as title 18, United States Code, section 281: a maximum fine of \$10,000 or maximum imprisonment for 2 years or both, and mandatory disqualification for holding any office under the United States.

Section 204. Practice in Court of Claims by Members of Congress

This section in substance repeats the provisions of the present title 18, United States Code, section 282 precluding Members of Congress from practice in the Court of Claims.

Section 205. Activities of officers and employees in claims against and other matters affecting the Government

Section 205 is the counterpart of the current title 18, United States Code, section

283 which prevents officers or employees of the departments, agencies, Senate, and House of Representatives (but not Members of Congress) from acting as agent or attorney for, or aiding or assisting in, the prosecution of any claim against the United States otherwise than in the proper discharge of their official duties. As pointed out above, the term "claim against the United States" has been limited to the decision in the case of *United States v. Bergson* so as to include only proceedings against the Government which seek money or property. Section 205 of the bill explicitly goes beyond this restricted class of proceedings and extends its bar against a Government employee's private representational activities to all matters in which the United States is a party or has an interest. Thus the section includes within its scope applications for licenses or other privileges, criminal proceedings, and other important matters not now covered.

Section 205 treats special Government employees in the same manner as section 203 of the bill. More precisely, a person in that category is subject to the restraints of section 205 only in regard to matters in which he has participated personally and substantially in a governmental capacity and, if his service in his agency has aggregated more than 60 days in the year past, matters pending before that agency.

Section 205 contains a provision lifting its bar in the case of a Government employee who represents another, without compensation, in a disciplinary, loyalty, or other personnel administration proceeding. The section also makes it possible for an individual in Government service, with his superior's approval, to represent, with or without compensation, his parents, spouse, child, or a person for whom he acts as fiduciary. However, this permission does not extend to representing such persons in matters in which the individual has participated personally and substantially as a Government employee or which are the subject of his official responsibility.

Section 205 also contains a provision authorizing a special Government employee to act as agent or attorney for another in the performance of work under a contract with or for the benefit of the United States if the head of the agency concerned with the contract certifies in writing, published in the Federal Register, that the national interest so requires. This narrow authority is given to take care of any situations involving the national interest where an intermittent employee's special knowledge or skills may be required by his employer or other private person to effect the proper performance of a Government contract but where his services may be unavailable in the absence of a waiver of section 205.

Section 205 contains a declaration that it does not prevent an officer or employee from giving testimony under oath or making required official statements.

The Judicial Conference of the United States has recommended to the committee that part-time U.S. commissioners be exempted from the comprehensive coverage of section 205. The Conference believes that the office of Commissioner can best be filled by a lawyer and has consistently encouraged the appointment of lawyers. As of May 16, 1962, there were 692 commissioners, of whom 469 were practicing attorneys. All but a very few of these attorneys perform services on a part-time basis and the Conference believes the continuation of their services is important to the fair administration of the criminal laws of the Federal Government.

As noted by the Conference, U.S. commissioners are not among those who may be classified as special Government employees under section 202 of the bill as it came before the committee, with the consequence that section 205 would foreclose attorneys who

are part-time commissioners from engaging in the field of Federal practice. It should be added that section 203 would have virtually the same effect. The end result under these circumstances would no doubt be that many, if not most, of the attorneys would resign to the detriment of the administration of justice.

The committee concurs in the view of the Judicial Conference that part-time commissioners should not be left within the full coverage of section 205—or of section 203. It believes the best solution is to treat all such commissioners as special Government employees. The committee has therefore amended the definition of special Government employees in section 202 to achieve that result.

The penalties of section 205 are a maximum fine of \$10,000, or maximum imprisonment for 2 years, or both.

Section 206. Exemption of retired officers of the uniformed services

This section provides that sections 203 and 205 of the bill do not apply to a retired officer of the uniformed services or to any person specially excepted by Congress. It should be noted at this point that section 2 of the bill repeals title 18, United States Code, sections 281 and 283, except as those statutes may apply to retired officers. Thus the net result of section 206 and this partial repeal is to leave the present status of retired officers under title 18, United States Code, sections 281 and 283 unchanged.

Section 207. Disqualification of former officers and employees in matters connected with former duties or official responsibilities; disqualification of partners

Section 207 replaces title 18, United States Code, section 284 dealing with postemployment activities. The latter prohibits a former employee of the Government, for a 2-year period following the termination of his employment, from prosecuting a claim against the United States involving any subject matter directly connected with which he was employed. Here again the term "claim against the United States" is subject to the limitation of the Bergson decision.

Subsection (a) of section 207 provides that a former Government officer or employee, including a former special Government employee, shall be permanently barred from acting as attorney or agent for anyone other than the United States in any matter in which the United States is a party or is interested and in which he participated personally and substantially in a governmental capacity. Thus, in addition to replacing the present 2-year disqualification with a lifetime bar, section 207(a) strengthens present law by going beyond claims for money or property to the whole range of matters in which the Government has an interest.

Subsection (b) bars a former employee of an agency, for a period of 1 year after his employment with it has ceased, from appearing as agent or attorney for another person before any court or agency in connection with a matter in which the Government has an interest and which was within the area of his official responsibility at this agency at any time within 1 year prior to the end of such responsibility. The prohibition would thus cover cases where the former employee had actually not participated in a matter while in the Government. As subsection (b) appears in the House bill, each of the time factors is set at a period of 2 years.

The committee received testimony at its hearings on the bill recommending the complete omission of the subsection on the ground that it would certainly and adversely affect recruitment by the scientific agencies of the Government of topflight personnel for regular service, especially in higher ranking supervisory positions, and their recruitment of intermittent personnel for work in broad

areas of agency endeavor. The committee recognizes the possibility that this result might ensue but it believes there is also a distinct possibility of harm to the Government when a supervisory employee may sever his connection with it one day and come back the next seeking an advantage for a private interest in the very area where he has just had supervisory functions. Striking a balance between the two possibilities, the committee has reduced the 2-year periods in the House bill to periods of 1 year. In addition, in order to make sure that a scientific agency is not cut off from the benefits which may accrue in an important situation from permitting the appearance of a former employee with outstanding scientific qualifications, the committee has added a proviso permitting such appearance, despite the provisions of subsection (a) or (b), upon an agency certification, published in the Federal Register, that the national interest would be served thereby.

Subsection (c) prohibits a partner of a person employed by the Government, including a special Government employee, from acting as agent or attorney for anyone other than the United States in matters in which the employee participates or has participated personally and substantially for the Government or which are the subject of his official responsibility.

Section 207 of the House bill includes a provision which would prevent a partner of a former Government employee, for a period of 2 years following the termination of the latter's employment, from engaging in any activities before the Government from which such former employee is barred. This prohibition, which seems to be applicable primarily to lawyers, is no doubt based on the imputation of a disqualification from one partner to another. It is to be contrasted with the prohibition in subsection (c) which covers the much more serious situation where an individual outside the Government is in a position to benefit from improper action by a partner currently in Government service. The committee considers that the additional provision included by the House falls principally within the field of legal ethics, where the present canons of ethics would seem to give adequate coverage. Thus the committee does not believe the provision should be included within a criminal statute and has omitted it.

The maximum penalties provided for violations of section 207 of the bill are a fine of \$5,000 or imprisonment for 1 year, or both.

Section 208. Acts affecting a personal financial interest

Subsection (a) is modeled on title 18, United States Code, section 434 which disqualifies an employee of the Government who has an interest in the profits or contracts of a business entity from the transaction of business with such entity. However, subsection (a) improves upon the present law by abandoning the limiting concept of the "transaction of business." The disqualification of the subsection embraces any participation on behalf of the Government in a matter in which the employee has an outside financial interest, even though his participation does not involve the transaction of business. Section 208 also reaches further than present law by requiring the disqualification of an employee from participation in matters in which his spouse, child, or persons with whom he has business connections have an interest. The bill, as it came before the committee, makes no distinction between minor children and those who have attained a majority. The committee believes that only the interest of a minor child should serve to disqualify the employee and has amended section 208(a) accordingly.

Subsection (a) at one point speaks in terms of an employee's disqualifying connection with a "business organization," thus

leaving open the implication that he would remain eligible to act for the Government in a matter involving a nonprofit organization with which he is connected. A great number of universities, foundations, nonprofit research entities, and other similar organizations today are engaged in work for the Government. Conflicts of interest may arise in relation to them just as in the case of the ordinary business for profit. The committee therefore has deleted the word "business" from the subsection to make clear that improper dealing by a Government employee in connection with nonprofit organizations is also prescribed.

Subsection (b) adopts a de minimis rule authorizing an agency waiver of an employee's disqualifying interest of insignificant proportions either on an ad hoc basis or pursuant to a general agency regulation.

Section 208 establishes maximum penalties for its violation of a \$10,000 fine, imprisonment for 2 years, or both.

Section 209. Salary of Government officials and employees payable only by United States

Section 209 is similar to title 18, United States Code, section 1914. The latter prohibits a Government employee from receiving any salary in connection with his Government services from a private source. Subsection (a) of section 209 would reenact this prohibition in substance and, in addition, would make it an offense for anyone to make a payment to a Government employee the receipt of which would violate the section.

The present statute's ban on the receipt of private payments "in connection with" an employee's Government services is replaced in section 209(a) with a ban on the receipt of such payments "as compensation for" such services. The new language is more precise in expressing what is clearly intended by the present broad phrase.

Subsection (b) is a declaration that a Government employee covered by subsection (a) is not thereby prevented from continuing to participate in a bona fide pension or other welfare plan maintained by a former employer.

Subsection (c) exempts special Government employees and employees serving the Government without compensation from the application of subsection (a) and also grants a corresponding exemption to any outside person paying compensation to such individuals.

Subsection (d) specifies that the section does not prohibit the payment or acceptance of sums under the terms of the Government Employees Training Act.

The maximum penalties authorized by section 209 are a fine of \$5,000 or imprisonment for 1 year, or both.

Section 128: Voiding transactions in violation of chapter; recovery by the United States

This section, which has no statutory counterpart at the present time, authorizes the President or, under regulations prescribed by him, a department or agency head, to declare void and rescind any transaction with the United States in relation to which there has been a final conviction under the bribery or conflict-of-interest statutes. The section further specifies that the United States would be entitled to recover, in addition to any penalty prescribed by law or in a contract, the amount expended or the thing transferred or delivered on its behalf, or the reasonable value of such thing. The question has arisen whether this section would operate to modify the Supreme Court decision relating to the Dixon-Yates matter (*United States v. Mississippi Valley Generating Co.*, 364 U.S. 520 (1961)). That result seems to be foreclosed since the opening language of section 218 states that its provisions

are "in addition to any other remedies provided by law."

OTHER PROVISIONS OF THE BILL

Section 2 of the bill repeals title 18, United States Code, sections 281, and 283 (except, as noted above, as they apply to retired officers) and title 18, United States Code, sections 282, 284, 434, and 1914. Section 2 also states that these sections of the Criminal Code are to be supplanted by the new sections 203, 204, 205, 207, 208, and 209 as set forth in section 1. Existing exemptions from the sections repealed would be retained as exemptions from the corresponding new sections except to the extent that they affect officers or employees of the executive branch, of any independent agency or of the District of Columbia, as to whom they would no longer be applicable.

Section 3 of the bill repeals title 5, United States Code, section 99, the anachronistic postemployment statute which is discussed earlier herein. Thus there will remain a single statute governing postemployment conduct, the new section 207.

Section 4 specifies that the legislation shall take effect 90 days after the date of its enactment.

In addition to the amendments to the House bill which are described above, the committee has made a number of minor clarifying and perfecting amendments which require no discussion.

The committee is of the opinion that this legislation, as amended by the committee, is a long step forward in strengthening and revising the existing conflict-of-interest laws. At the same time it should give stimulus to the Government's efforts to enlist technical and scientific experts on a temporary basis to aid the national defense effort.

The committee accordingly recommends favorable consideration of H.R. 8140, as amended.

In the opinion of the committee it is necessary to dispense with the requirements of subsection (4) of rule 29 of the Standing Rules of the Senate in order to expedite the business of the Senate.

INDIVIDUAL VIEWS OF SENATOR JOHN A. CARROLL

H.R. 8140 as reported by our committee is a long-needed modernizing, strengthening, and clarifying measure concerning the laws relating to bribery and conflicts of interest.

As chairman of the Subcommittee on Administrative Practice and Procedure I have become acutely aware of some of the problems in this area which have been experienced in the departments and agencies of the Government.

I present these additional views to emphasize that in H.R. 8140 we have created a "special Government employee" for whom the restraints upon regular Government employees have been relaxed under the bill. This was done to permit the Government to be able to bring advisers and consultants in temporarily—a problem which under present law is difficult, as the report indicates.

I wish to emphasize that there will have to be close administrative regulation of this provision. Among the regulations should be current statements of their financial interests, a continuous scrutiny of the role and need for the individual in the agency, and of the appearance of these employees on behalf of non-Government organizations and enterprises.

These individual views of mine are in the nature of a warning and a caution to the executive branch to be more alert and to be more vigilant where we have relaxed this conflict-of-interest provision.

By the same token Congress must exercise greater diligence and alertness to the functions of the executive branch and, may I add, ought to reexamine, from time to time,

its own relationships to the provisions of this bill.

There can be no double standard. The high standard of conduct that we in the legislative branch expect of the executive branch must be equally applied to ourselves.

JOHN A. CARROLL.

INDIVIDUAL VIEWS OF SENATOR KENNETH B. KEATING

Enactment of H.R. 8140, as reported by the committee, will serve to clarify, modernize, and, in some respects, strengthen existing conflict-of-interest laws. In my judgment, however, it contains several serious omissions.

Its most important defect is its failure to deal with conflict-of-interest problems affecting Members of Congress. The legislative branch, of course, has special problems, but these do not require an exemption of Congress from the same high ethical standards we intend to impose on the officers and employees of the other branches of the Government. There is no justification for a double standard of morality in Government, one for the Congress and another for the rest of the public service. The public will resent any "holier than thou" attitude on the part of Congress, and properly so.

Conflict-of-interest questions confront the Members of Congress almost daily. For example, should a Representative or Senator vote on matters in which he has some personal financial stake? What are the proper limits on the appointment of relatives to the Member's staff? What kind of outside employment and income are compatible with certain committee assignments? What campaign contributions are properly acceptable and which are not? What are the limits on a Member's representation of constituent interests before the regulatory agencies and other Government departments? Under what circumstances, if any, should Members be permitted to accept fees for speeches to various interest groups?

One of the difficulties now is the absence of any legislative machinery for dealing with these and similar questions. As a result, each Member must act on his own judgment, which, in the light of the pressures on him, may be a very faulty guide to what is right, no matter how good his intentions.

I believe that it would serve the interests of the Members of Congress as well as the public interest if a source of authoritative guidance as to how to deal with such problems were made available.

There are some cases, of course, in which a Member's conduct would be clearly wrong. For example, no Member should be permitted to accept a fee for prosecuting claims against the United States, obtaining Government contracts, or appearing in regulatory agency proceedings. Such obvious misconduct is now a violation of the criminal law and should continue to be treated in this way. But there are many possibilities of conflict of interest which are not so apparent. The criminal law, with its requirements of malice and willfulness, does not offer a practical solution for cases in this shadowland of conduct.

Early in this Congress I joined in sponsoring legislation proposing a three-step approach to the legislative conflict-of-interest problem. The three steps were: (1) Creation of a Joint House-Senate Committee on Ethics to investigate and recommend a specific code of ethics for the Congress; (2) adoption of an interim code of ethics which would be in force during the joint committee's study; and (3) a grant of authority to the Senate Committee on Rules and Administration to give advisory opinions to the Members of the Senate on conflict of interest questions.

I testified in favor of these proposals at a hearing on H.R. 8140 before the Committee

on the Judiciary. However, they were not explored extensively, and questions have been raised by those strongly in favor of acting in this field, about the details of the proposed interim code of ethics.

Because of the lateness of the session, apprehension also has been expressed that any attempt to press this proposal as an amendment to the present bill may imperil its chances of passage. I believe that the principal bill is vitally important and has been too long delayed already and, therefore, would be most reluctant to subject it to any such hazards.

At the same time I know of no reason to defer action on the establishment of a Joint House-Senate Committee on Ethics or the enlargement of the authority of the Senate Committee on Rules and Administration. Indeed, the absence of an interim code of ethics makes it more important than ever that these other steps be taken as promptly as possible. It is my intention, therefore, to offer an amendment for these purposes when this bill is before the Senate.

The same is true of another amendment I have offered to require that all ex parte communications from Congressmen relating to agency adjudications be made a matter of public record. There are many circumstances in which it is appropriate for a Member of Congress to communicate in behalf of his constituents with an agency about the status, disposition, or merits of a pending case. However, I can conceive of no circumstances under which it would be proper to do so without some notice to the parties in the agency proceedings. Elemental fairness in agency adjudications requires that all such communication be made a matter of record. In addition, disclosure would be a powerful safeguard against any improper attempts to influence agency decisions in such cases. My proposal would not prohibit contacts by Members of Congress with the administrative agencies, but it would curb abuses in this process by exposing every such contact to the light of day.

The bill reported by the committee contains many of the provisions of legislation which Senator JAVRS and I joined in sponsoring early in this Congress on the basis of a report of a special committee of the Bar Association of the City of New York after an intensive study of executive conflict-of-interest problems. Unfortunately, however, H.R. 8140 omits two key provisions of this legislation dealing with administrative enforcement and gifts. In my judgment, amendments should be added to the proposed legislation covering both points.

(1) Administrative enforcement

This amendment would authorize agency heads to take whatever disciplinary action was appropriate against those who violated the substantive provisions of the law or any regulations issued thereunder. It would also permit administrative action designed to prevent violations from occurring, such as the filing of reports by officers and employees of the agency and by persons appearing before or dealing with the agency.

These administrative control procedures would not affect the application of criminal penalties in appropriate cases. There are many conflict-of-interest situations, however, in which a large gray area exists. The demanding requirements of guilt beyond a reasonable doubt in criminal cases may make it difficult to prevail in criminal proceedings in cases which definitely warrant civil or administrative sanction.

President Kennedy, in his message to the Congress on April 27, 1962, recognized the need for this dual approach to enforce the conflict-of-interest laws. In that message he said:

"Most of the existing laws are criminal statutes. As such, they have been strictly construed and, because of their harshness,

infrequently invoked. By granting this added flexibility we help to insure more effective enforcement. In addition, the regulations which are adopted will permit more specific adaptation of the general prohibitions tailored to the activities of particular agencies."

It is clear from the President's message that he recognized a form of administrative enforcement as an important ingredient for conflict-of-interest legislation. I wholeheartedly agree with his views in this regard.

(2) GIFTS

This amendment is directed to an area in our conflict-of-interest laws where there now exists almost a complete void—gifts to Federal employees. The Billy Sol Estes case is only one of many indicating the seriousness of this omission from the law. Under existing law the acceptance of a gift by a Federal employee may not be illegal even though the employee's agency or department does regular business with the donor. This in my opinion is absurd and should be changed.

Objections were raised at the hearings on H.R. 8140 to the scope of the amendment originally proposed with respect to gifts. In order to avoid as much controversy as possible on this issue, therefore, the amendment will be modified to reflect these objections. As modified, however, it would still prohibit any Government employee from soliciting or accepting any gift from any person where the employee has reason to believe that such person (a) is seeking to obtain contractual or other business or financial relationships with the employee's agency, or (b) conducts operations or activities which are regulated by the employee's agency, or (c) has interests which may be substantially affected by the employee's performance or nonperformance of his official duties. Certainly, such obvious attempts at influence peddling of the purchasing of good will should be prohibited in any meaningful revision of the conflict-of-interest laws.

In conclusion, I believe a word of commendation should be expressed to the Bar Association of the City of New York and its special committee under the leadership of Roswell B. Perkins for the time and attention they have given this subject. It is now up to the Congress to make certain that they have not labored in vain. Enactment of this measure, with the amendments I have discussed, would be a major step in assuring public confidence in the integrity of government. At the same time, it would remove impediments which now exist to the recruitment of key personnel. The difficult and challenging tasks facing our Government make it imperative that we take every step necessary to assure its efficient and honest operation. This bill would contribute significantly to that goal and should not be delayed.

KENNETH B. KEATING.

Mr. LAUSCHE. Mr. President, I agree with the Senator from Tennessee that there is a need to tighten the law on the subject of conflict of interest as it relates to employees of the Federal Government.

The PRESIDING OFFICER. The time of the Senator from Tennessee has expired.

Mr. KEFAUVER. Mr. President, I ask unanimous consent that the time may be extended.

Mr. MANSFIELD. Mr. President, I prefer not to have the time extended.

Mr. KEATING. Mr. President, I think that almost all of my time has been committed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that an addi-

tional 2 minutes be allocated to the Senator from Ohio.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. LAUSCHE. As I see it, we should go further and make certain that all branches of the service are covered. I am in agreement with what has been said by the Senator from Georgia [Mr. RUSSELL] that we should especially examine into the positions of retired military personnel in private employment who are doing business with the Department of Defense through members of that Department who formerly were their subordinates.

Second, the whole gamut will not be covered unless some action is taken next year which will apply to Members of Congress. We shall be in an indefensible position if we impose criminal sanctions upon Government employees when Members of Congress are immune from punishment for similar actions committed by them. No answer can be given to the charge that we provided criminal penalties for employees but gave no consideration to some restriction upon what the actions of a Member of Congress may be.

I realize the difficulty of the task. The Senator from New York [Mr. KEATING] has recommended that at least guidelines ought to be established, so that we will be under some legal requirement to make certain that we do not participate in the passage or defeat of proposed legislation when we have a substantial personal interest in what is being done.

Mr. KEFAUVER. I fully agree with the Senator from Ohio. I say to him, as I said to the Senator from Oregon [Mr. MORSE] and the Senator from Georgia [Mr. RUSSELL], that so far as I am concerned I will do my very best to try to push for consideration of the problem as it relates to retired military officers and Members of Congress, with the purpose of establishing in the next session of Congress, guidelines which must be followed.

Mr. KEATING. Mr. President, I yield myself 10 minutes.

The bill before the Senate is designed to clarify, modernize, and strengthen existing conflict-of-interest laws. It is a good bill, and it will have my full support. In many respects, the bill reflects the recommendation of a special committee of the Bar Association of the City of New York, which conducted a thorough study of the entire subject beginning in 1958. We are all indebted to that committee for the excellent service it has rendered in connection with the proposed legislation.

In both the 87th Congress and the 86th Congress my colleague from New York [Mr. JAVITS] and I have joined in the introduction of proposed legislation designed to carry out all the recommendations of the bar association committee. At the same time, we have introduced other measures which apply specifically to the legislative conflict-of-interest problems. Our goal has been to achieve the same standards of ethics in the legislative as well as the executive branch of the Government.

Unfortunately, the bill now before the Senate omits several important provisions of the measure introduced by Senator JAVITS and me and does not deal at all with the conflict-of-interest measures which are designed specifically for the legislative branch of the Government. In my individual views, printed in the report of the Committee on the Judiciary on H.R. 8140—Senate Report No. 2213—I discussed these defects in the pending bill in some detail and indicated that amendments would be offered to add such measures to the bill.

However, I have been informed—and I believe correctly—that at this late date in the session attempts to amend the bill might be fatal to its passage. We have been advised that any substantial amendments would create great, if not insuperable, obstacles to the passage of the bill in the other body. The acceptance of our amendments in the Senate, under these circumstances, would be a hollow victory, since it could mean that the session would end without any legislation on conflicts of interest. I, for one, am unwilling to subject this important measure, containing many excellent features, to any such 11th-hour hazards.

It is my intention, however, early in the next session of Congress to join again with my colleague in proposals for coping with legislative conflicts of interest.

Mr. President, beginning at the bottom of page 17 of the report are the three proposals in this area:

(1) Creation of a Joint House-Senate Committee on Ethics to investigate and recommend a specific code of ethics for the Congress; (2) adoption of an interim code of ethics which would be in force during the joint committee's study; and (3) a grant of authority to the Senate Committee on Rules and Administration to give advisory opinions to the Members of the Senate on conflict of interest questions.

It would be expected, if these proposals were approved, that the House would vest in its Committee on House Administration authority similar to that granted the Senate Committee on Rules and Administration.

Mr. President, at the very least we should proceed promptly in the next session of Congress to create a joint Senate-House committee to study this problem and to recommend a code of ethics for Members of Congress.

I understand that the distinguished Senator from Tennessee [Mr. KEFAUVER] feels exactly as I do, and that he will be happy to join in sponsoring such proposed legislation.

Mr. KEFAUVER. Mr. President, will the Senator from New York yield?

The PRESIDING OFFICER (Mr. PELL in the chair). Does the Senator from New York yield to the Senator from Tennessee?

Mr. KEATING. I yield.

Mr. KEFAUVER. I wish to repeat that the two Senators from New York [Mr. KEATING and Mr. JAVITS] have done great work on this bill. Personally, I am very sorry the situation is not appropriate to do something more constructive in regard to the conflict of interest statute applicable to Members of Congress and to retired military officers.

But, as the Senator from New York has said, we know that if such provisions were added, there would not be time to have the bill passed by the House at this session.

So I shall wholeheartedly join the Senator from New York and other Senators in sponsoring such legislation to enable the necessary joint committee or other group to obtain consideration of these problems at the next session.

Mr. KEATING. Mr. President, I appreciate the remarks of the Senator from Tennessee, and also his assistance in connection with this effort.

I judge from the remarks of the Senator from Ohio [Mr. LAUSCHE] that he, too, is very much interested in this subject.

Of course, Mr. President, the legislative branch has special problems; but these do not require exemption of Congress from the same high ethical standards we impose on the officers and employees of the other branches of the Government. There is no justification for a double standard of morality in government—one for the Congress and another for the rest of the public service. The public will resent any "holier than thou" attitude on the part of Congress, and properly so.

Conflict of interest questions confront the Members of Congress almost daily. For example, should a Representative or Senator vote on matters in which he has some personal financial stake? What are the proper limits on the appointment of relatives to the Member's staff? What kind of outside employment and income are compatible with certain committee assignments? Which campaign contributions are properly acceptable and which are not? What are the limits on a Member's representation of constituent interests before the regulatory agencies and other Government departments? Under what circumstances, if any, should Members be permitted to accept fees for speeches to various interest groups?

Mr. KEFAUVER. Mr. President, will the Senator from New York yield for a brief observation?

Mr. KEATING. I yield.

Mr. KEFAUVER. In his report, the Senator has proposed a code of ethics which I believe would be of great importance. He has proposed that representations made by Members of Congress to executive agencies be made matters of public record. I think it would aid the executive agencies to require that to be done, and I wish to stress the importance of that part of the individual views of the Senator.

Mr. KEATING. I agree with the Senator from Tennessee; and that is one of the amendments which I would have proposed if we had not been confronted with this unusual situation.

Of course there are some cases, in which a Member's conduct would be clearly wrong. For example, no Member should be permitted to accept a fee for prosecuting claims against the United States, obtaining Government contracts, or appearing in regulatory agency proceedings. Such obvious misconduct is

now a violation of the criminal law, and should continue to be treated in this way. But there are many possibilities of conflict of interest which are not so apparent. The criminal law, with its requirements that malice and willfulness must be shown, does not offer a practical solution for cases in this shadow-land of conduct.

The front pages of newspapers throughout America have carried, over a period of many months, daily stories about the Billy Sol Estes saga. If there is one thing this story of greed and influence peddling demonstrates, it is the shortcoming of any conflict of interest code that does not include provisions for the Members of Congress and their employees. I do not contend that the restrictions on executive branch employees can be applied in the same words to the members and employees of the legislative branch. The general principle that no public servant should be influenced by corrupt practices or motives does apply to everyone, but several fundamental differences between the legislative branch and the executive branches hopelessly complicate any effort to apply the same enactments to both.

For one thing, a Member of Congress must stand for election periodically—in the case of House Members, every 2 years. In areas in which there is a strong two-party system and in which the electorate is intelligent and well-informed, this may be the most important sanction against any conflict of interest.

Furthermore, a Member of the House of Representatives is, by definition, a representative of the people and interests of his district, and a distinction must be made between what he does for his own private interest and what he does for the private interest of his constituents. The difficult problems arise when the two interests overlap—as, for example, when a farm-State Congressman who has a farm of his own, votes for high subsidies from which he personally would benefit.

In addition, Congressmen cannot subsist on their salaries alone. The cost of campaigning for almost any seat is far more than the Member's total salary. A total ban on outside contributions to a Congressman certainly would be unrealistic.

Moreover, the view persists that being a Member of Congress is still a part-time job. This view could be another reason, of course, for a different attitude toward outside interests. But in recent years this has been more a matter of theory than a fact—as this long session pointedly demonstrates.

Finally, there is the principle that if the constituency wants to elect a man in spite of improprieties in his actions or interests, that is their privilege in a democracy. This is another version of the old maxim that people get the kind of government they deserve.

These differences, however, do not dispose of the problem or justify complete inaction on the legislative conflict-of-interest situations which do exist. The

adoption of the amendment for disclosure of ex parte contents referred to by the distinguished Senator from Tennessee, for example, would be very helpful in that everything would then be made a matter of record. A code of ethics to govern the actions of Members of Congress and machinery for its enforcement also would be very constructive.

The PRESIDING OFFICER. The time the Senator from New York has yielded to himself has expired.

Mr. KEATING. Mr. President, I yield myself 5 more minutes.

The PRESIDING OFFICER. The Senator from New York is recognized for 5 additional minutes.

Mr. KEATING. Mr. President, the measures, in which I have joined, specifically relating to legislative conflicts of interest take into account the special problems of Congress; but they strongly reject any notion that Members of Congress should be exempt from the high ethical standards which we expect of all members of the executive branch.

Basically, these measures are designed to provide the machinery for considering and resolving conflict of interest problems. They would establish a Joint Senate-House Committee on Ethics to investigate and recommend a specific code of ethics for Members of Congress, and would vest the Senate Rules Committee with authority to give to the Members of the Senate advisory opinions on such problems. These committees would function somewhat like the grievance or ethics committees of bar associations, medical societies, and other professional organizations. Their advice to Members and legislative employees might not have the force of law; but they would have the force of public opinion, and in severe cases could serve as the basis for disciplinary action. This kind of machinery for the legislative branch would be a source of protection for the Members, as well as for the public. It ought to be welcomed by everyone interested in good government.

I am very proud to be a member of the bar; however, it is necessary to have some disciplinary procedures available with reference to members of the bar. I am also extremely proud to be a Member of the U.S. Senate; and I believe it would be in the public interest, in the national interest, and in our own interest to have some supervision over our conduct in this body.

Another measure in this field which I have joined in offering would require that all ex parte communications from Congressmen relating to agency adjudications be made matters of public record. This is the measure to which the Senator from Tennessee has referred. There are many circumstances in which it is perfectly appropriate for a Member of Congress to communicate in behalf of his constituents with an agency about the status, disposition, or merits of a pending case. However, I can conceive of no circumstances under which it would be proper to do so without some notice to the parties in the agency proceedings. Elemental fairness in agency adjudications certainly requires

that all such communication be made matters of record. In addition, as intimated in the remarks of the Senator from Tennessee, disclosure would be a powerful safeguard against any improper attempts to influence agency decisions in such cases. This proposal would not prohibit contacts by Members of Congress with the administrative agencies; but it would curb abuses in this process, by exposing every such contact to the light of day.

Congress cannot indefinitely defer action on measures such as these without impairing public confidence in the integrity of our institutions. I say this despite the profound respect which I have for the legislative branch and its membership. The public cannot possibly know in detail of the attitude, diligence, and honesty of individual Members. In evaluating any organ of government, a few unhappy cases can sour the public's taste and darken the image of the House and Senate.

We must demonstrate that the area of legislative oversight does not exclude our own conduct and operations, and, above all, that there is effective machinery in the Congress for exposing and correcting any abuses which may arise.

In my view, these considerations are self-evident. I know from experience in the other body, however, the difficulties which would be encountered in attempting to write them into this bill at this stage in its legislative progress. Nevertheless, I believe that the unfairness of legislating in this area only for the executive branch of the Government will become so patent in a short time that added impetus will be given to our attempts to apply comparable standards to the legislative branch.

I hope that in the next session an early start can be made, and that we will persist in our efforts until the action needed in this field is completed.

I pledge myself to that end, to have legislation introduced, to urge hearings, and appeal to others besides those who have already spoken on this subject to join in this effort.

Mr. President, I yield 5 minutes to my colleague from New York, who has been very active in this field and with whom I have joined in offering these proposals.

Mr. JAVITS. Mr. President, I thank my colleague for yielding time to me. The reason for my interest in this subject is evident. When I was attorney general of the State of New York, the New York State code of ethics had just taken effect, and because the attorney general was charged with the responsibility in this matter, I had the privilege of organizing, in my own office, the necessary committees and other activities which dealt with the supervision of the code of ethics for the State of New York under its public officers law.

The law of the State of New York, unlike what we are enacting here today, expressly provides for a code of ethics for members of the State legislature. Section 74 of the New York public officers law carries out that design.

I join with my colleague from New York [Mr. KEATING]; and the Senator

from Tennessee [Mr. KEFAUVER] in deprecating the fact that provision is not made in the pending bill for the legislative arm and for Members of Congress, except in the most elementary recodification of existing law relating to bribery, actual appearance in court, and payment from sources other than the Federal Government for services rendered to the Federal Government.

But the bill does not meet the main question, that this represents a double standard of morality, one for the legislative department and one for the executive arm. I do not subscribe to any such double standard.

I think it is important that one practice what he preaches. I am pleased to note that my colleague from New York [Mr. KEATING] and I were among the first to publish, before the rules required it, a list of our employees and the compensation which was paid to them.

Subsequently such a requirement was incorporated in the rules and is now standard practice for all Senators. It arose during the time when there was a controversy over the employment of relatives. I was very honored to take part, with my colleague, in that disclosure.

I think this is the essence of what we are trying to effectuate: a sanction which the public can impose upon Members of the Congress can be imposed only if the public knows. Mr. President, I repeat that, because I think it is critically important—a sanction which is to be imposed on Members of Congress can be imposed only if the public knows. The popular conception is that as we stand for election it is the public which must impose these sanctions if we do not do everything we should do, aside from the basic power of each body to discipline, and, if necessary, to expel its Members. So the public and our colleagues must know. Otherwise, there is no opportunity for either self-discipline or for the public to hold us to strict account.

It is for that reason that very early in my service I went to work on this subject as a member of the Committee on Rules, and I sponsored, with my colleague Mr. KEATING, Senate Concurrent Resolution 10 and S. 627, which had for their purpose administering a code of ethics for Members of Congress and requiring the recording by the agencies which are approached by Members of Congress of the cases in which they were approached and who approached them, so that all the information might be a matter of public record.

I think it is very sad that such requirements are not dealt with in the pending bill. I cosponsored with my colleague from New York [Mr. KEATING], S. 603, containing excellent provisions for the executive department, advocated by the Association of the Bar of the City of New York. Those provisions are very largely incorporated in the bill.

I shall support the bill. I very much desire to offer, with my colleague from New York [Mr. KEATING], the amendments which are, in my opinion, absolutely essential to a really balanced and honest code of ethics, to include Mem-

bers of Congress; but both of us are convinced that such action would end the bill for this session. I therefore pledge my efforts, if the people return me to the Senate, as I am standing for election this year, to come back and very early in the next session begin the fight to add to the measure a code of ethics for Members of Congress.

Mr. President, I ask unanimous consent that the code of ethics of the public officers' law of New York be printed in the RECORD at this point as a part of my remarks.

There being no objection, the code of ethics was ordered to be printed in the RECORD, as follows:

SECTION 74. CODE OF ETHICS

1. Definition: As used in this section: The term "State agency" shall mean any State department, or division, board, commission, or bureau of any State department.

The term "regulatory agency" shall mean the banking department, insurance department, State liquor authority, department of agriculture and markets, department of State, department of public service and department of labor.

The term "legislative employee" shall mean any officer or employee of the legislature but it shall not include members of the legislature.

2. Rule with respect to conflicts of interest: No officer or employee of a State agency, member of the legislature or legislative employee should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.

3. Standard:

(a) No officer or employee of a State agency, member of the legislature or legislative employee should accept other employment which will impair his independence of judgment in the exercise of his official duties.

(b) No officer or employee of a State agency, member of the legislature or legislative employee should accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority.

(c) No officer or employee of a State agency, member of the legislature or legislative employee should disclose confidential information acquired by him in the course of his official duties nor use such information to further his personal interests.

(d) No officer or employee of a State agency, member of the legislature or legislative employee should use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.

(e) No officer or employee of a State agency should engage in any transaction as representative or agent of the State with any business entity in which he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties.

(f) An officer or employee of a State agency, member of the legislature or legislative employee should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position, or influence of any party or person.

(g) An officer or employee of a State agency should abstain from making personal investments in enterprises which he has reason to believe may be directly involved in decisions to be made by him or which will

otherwise create substantial conflict between his duty in the public interest and his private interest.

(h) An officer or employee of a State agency, member of the legislature or legislative employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

(i) No officer or employee of a State agency employed on a full-time basis nor any firm or association of which such an officer or employee is a member nor corporation a substantial portion of the stock of which is owned or controlled directly or indirectly by such officer or employee, should sell goods or services to any person, firm, corporation or association which is licensed or whose rates are fixed by the State agency in which such officer or employee serves or is employed.

(j) If any officer or employee of a State agency, member of the legislature or legislative employee shall have a financial interest, direct or indirect, having a value of \$10,000 or more in any activity which is subject to the jurisdiction of a regulatory agency, he should file with the secretary of state a written statement that he has such a financial interest in such activity which statement shall be open to public inspection. Added L.1954, c. 696, eff. Jan. 1, 1955.

LEGISLATIVE DECLARATION

Laws 1954, chapter 696, section 1, effective January 1, 1955, provides:

"Declaration of Intent. A continuing problem of a free government is the maintenance among its public servants of moral and ethical standards which are worthy and warrant the confidence of the people. The people are entitled to expect from their public servants a set of standards above the morals of the marketplace. A public official of a free government is entrusted with the welfare, prosperity, security and safety of the people he serves. In return for this trust, the people are entitled to know that no substantial conflict between private interests and official duties exists in those who serve them.

"Government is and should be representative of all the people who elect it, and some conflict of interest is inherent in any representative form of government. Some conflicts of material interests which are improper for public officials may be prohibited by legislation. Others may arise in so many different forms and under such a variety of circumstances, that it would be unwise and unjust to proscribe them by statute with inflexible and penal sanctions which would limit public service to the very wealthy or the very poor. For matters of such complexity and close distinctions the legislature finds that a code of ethics is desirable to set forth for the guidance of State officers and employees the general standards of conduct to be reasonably expected of them."

Mr. JAVITS. Mr. President, the New York State code of ethics is very clear and powerful, not only in setting standards for legislators as well as for executive and administrative officers and employees, but also in requiring disclosure when a legislator has a financial interest of \$10,000 or more in any activity which is subject to the jurisdiction of a regulatory agency.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. JAVITS. May I have 1 more minute?

Mr. KEATING. I yield 1 more minute to my colleague.

Mr. JAVITS. It seems to me that is the nubbin of the problem which we face. I believe the example which has been set by the Senators from Pennsylvania [Mr.

CLARK and Mr. SCOTT] in disclosing their investments is an excellent one. I believe it is essential that the public know what interest we hold personally. I am not for prohibiting Senators from holding an interest or restricting it, but I am in favor of disclosing it. If we are constantly subject to public sanction and subject to disclosing to the public whatever interest we have, the public can exercise its judgment, when we vote on a particular measure, and in connection with whatever we do, notwithstanding our personal financial involvement. This is the *sine qua non*, the essence, of any code of ethics for Members of Congress.

I cannot see how we can rest in good conscience upon this bill without, immediately upon our return in January, seeking to complete it—and I use that word advisedly—by adding a code of ethics which will be enforceable through our own machinery, by action of our own committees or in the Congress, for each House separately has set up a method we had proposed by way of an interim code. I do not see how in sheer fairness we can do anything less than that.

I close by complimenting those who have worked on the bill and by saying that we have not completed our job, and by pledging myself, when we return, to join with my colleagues in bringing about a completion of the legislation.

The PRESIDING OFFICER. All time on the bill has expired.

Mr. KEFAUVER. Mr. President, I ask unanimous consent—

Mr. KEATING. Mr. President, I think that is a strange arithmetical computation.

Mr. KEFAUVER. Mr. President, I ask unanimous consent that the time may be extended an additional 2 minutes.

Mr. KEATING. Mr. President, I ask unanimous consent that it be extended 5 minutes.

The PRESIDING OFFICER. Is there objection to the request to extend the time? The Chair hears none; and, without objection, the time is extended 5 minutes.

Mr. KEFAUVER. Mr. President, I should like to exercise the privilege of yielding to the Senator from Rhode Island [Mr. PASTORE].

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. PASTORE. Mr. President, I desire to associate myself with the Senator from Tennessee and the Senators from New York in connection with their proposed amendments, although I recognize they will not be pressed at this time, for obvious reasons, already explained. I think the time has come when we may best obviate whatever suspicion there may be on the part of our constituencies or the country at large as to the financial interests of various Members of Congress when measures are considered by the Houses of Congress, and we must register our support or our rejection.

I hope that whatever code or procedure may be devised will be a reasonable and sensible one, and that we shall approach this very important subject with calmness and judiciousness, without emotion and without fanfare, so that

whatever we do may be done wholly in the public interest.

I think this proposal is very salutary. I hope that at some future date it will be recognized by the Congress, and that some code of ethics may be adopted by this branch of the Congress to govern situations in which there might be a possible conflict of interest.

Mr. KEATING. Mr. President, I yield such time as he may need to the Senator from Nebraska [Mr. HRUSKA].

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. HRUSKA. Mr. President, I rise to support H.R. 8140. The bill in its present form represents several years' study by various groups and committees both within and outside of Government. There has been unanimous agreement as to the need for this type of legislation.

Briefly stated, the bill has a twofold purpose. First, it revises and strengthens the existing bribery and conflicts-of-interest statutes. Secondly, it tailors the conflicts-of-interests statutes so as to better adapt them to the modern day needs of the Government in recruiting qualified personnel.

The present conflicts-of-interest laws are, of course, based upon the age-old injunction that "No man shall serve two masters." The bill before us would neither alter nor compromise that underlying principle. We must have Government officials whose loyalties are undivided. While we cannot legislate ethical conduct we can legislate away the opportunities which might otherwise tempt Government employees to place self-interest above duty.

Although the present laws are directed to this end, they fall far short in many areas of employee conduct. Several of these laws have been on the books for almost a century and simply fail to take into account the realities of present-day Government. On the one hand, they permit certain types of conduct which clearly should be prohibited. Yet, at the same time they are overly restrictive in other areas to the extent that there is no reasonable relationship between the conduct proscribed and abuse of office. As a result they actually hinder the Government in its efforts to recruit outside talent.

It is to plug these gaps and to remove these meaningless restrictions that H.R. 8140 is intended. The bill seeks to strike a more precise balance between the Government's interest in having faithful employees on the one hand and an unhampered source of valuable talent on the other.

In the hearings which were held in both bodies, several witnesses testified as to the Government's increasing need for the services of part-time specialists and consultants. With the rapid advance of science and technology and the various other fields in which the Government becomes involved, there obviously is a corresponding demand for highly trained personnel.

Many of these specialists cannot be engaged on a full-time basis, either because their services are not needed full-time or because the Government cannot compete with the salaries that are paid

by private industry. Therefore, the most practical arrangement is to retain these individuals as part-time consultants.

In theory at least, this type of arrangement should enable the Government to hire the country's best talent. As a practical matter, however, this has not been the case. Because of the present conflicts of interest laws, many individuals are unwilling to enter part-time Government service. To do so would require them to severely restrict any of their outside activities which may involve dealings with the Government. The resulting financial hardship involves a greater sacrifice than most individuals are willing to make, so the Government is denied the benefit of these skills.

H.R. 8140 meets the problem of the part-time consultant by creating a class of "special Government employees" to whom special rules would apply. The "special Government employees" is defined as an officer or employee of the executive or legislative branch or any independent agency or the District of Columbia who serves not more than 130 days during any period of 365 consecutive days.

The provisions of the bill which prohibit Government officers and employees from representing others in proceedings in which the United States is interested would apply to special Government employees only in relation to those matters, first, in which he participated personally and substantially as a Government employee; or, second, which are pending in the department or agency of the Government in which he is serving. The prohibition as to this latter class of cases would not apply, however, if the employee has worked no more than 60 days in such department or agency.

The special treatment given to part-time consultants is probably the most novel feature of the bill. There is no comparable provision in existing law. This provision should help to overcome the Government's recruiting problems and, at the same time, adequately protect the Government against conflicting interests.

H.R. 8140 also makes significant improvements in the present law as it applies to regular, full-time employees.

Under the existing law, Members of Congress and officers and employees of the Government are prohibited from receiving compensation for services rendered before Federal agencies in matters in which the United States is interested. The bill broadens the types of employees and proceedings which are affected and makes illegal the payment as well as the receipt of forbidden compensation.

Section 283 of the criminal code presently prohibits a Government employee from acting as an attorney or agent for prosecuting a claim against the United States. Since the term "claim" has been defined to mean only demands for money or property, this section fails to cover many types of proceedings which affect the Government. H.R. 8140 therefore adds a further prohibition against representing anyone before any department, agency, or court in any matter in which the United States is a party or has a direct and substantial interest. The bill

also extends this restriction to partners of Government employees.

In order to remove conflicts arising from previous Government employment, the bill prohibits a former Government employee from acting as attorney or agent for anyone in connection with any matter in which the United States is a party or has a direct and substantial interest and in which the former employee participated "personally and substantially" as a Government employee. The present law dealing with former employees applies only to the prosecution of claims and limits the prohibition to a 2-year period following the termination of employment. Under the bill, the prohibition is extended to a wider range of activities and is made permanent.

With respect to those matters in which the former employee did not participate personally and substantially, but which were under his "official responsibility," the former employee is barred from representing others for a period of 1 year after his Government employment has ceased.

Under the present law, a Government employee is prohibited from transacting business on behalf of the Government with any business entity in which he has a pecuniary interest. H.R. 8140 broadens and rewords this prohibition so as to bar Government employees from participating personally and substantially in any matter in which he, his family, or his business associates have a financial interest. As a further refinement, the bill establishes a procedure for exempting from the application of this section, those employees whose financial interest in a business is so small as to be inconsequential.

The present law barring Members of Congress from practicing in the Court of Claims is continued under the bill. It also continues the present prohibition against the receipt by a Government employee of additional compensation for his Government service from private sources.

The provisions of H.R. 8140 dealing with bribery revise and consolidate into one section of the bill the several separate bribery sections which are presently contained in the criminal code. The consolidation of these sections helps to clarify this field and renders uniform the definition of bribery. The bill also provides for greater uniformity in penalties.

In addition to its criminal provisions, H.R. 8140 adds to the civil remedies which are presently available to the Government. The bill authorizes the President to void those contracts or other transactions in relation to which there has been a violation of the bribery or conflicts-of-interest laws.

A special committee of the Association of the Bar of the City of New York, which was appointed to study the Federal conflicts-of-interest laws several years ago, and has done outstanding work in this field, has given its enthusiastic support to the bill. It also has the support of the Justice Department and the American Bar Association.

I strongly urge that the bill be passed.

I agree that there are further problem areas, such as the receipt of gifts by Government employees, which are not covered by the bill. These areas deserve our attention and should be studied further. Also this legislation, if it is enacted, should be reappraised in due time to make sure that it is being effective.

The PRESIDING OFFICER. All time has expired.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senator from Nebraska may proceed for 1 additional minute.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HRUSKA. If any abuses creep into the Government employment structure under the exemptions and provisions of the bill, we shall be on the lookout for them and will deal with them accordingly.

(Mr. MORSE submitted the following exhibit which was referred to in his previous remarks.)

INCOME DISCLOSURE BILLS SPONSORED BY SENATOR WAYNE MORSE

Seventy-ninth Congress, second session (1946), Senate Resolution 306: Requiring Senators to file annual statements of income and financial transactions. Referred to Committee on Banking and Currency.

Eightieth Congress, first session (1947), Senate Resolution 31: Amending rules so as to require Senators to file annual statements of income and dealings in securities. Referred to Rules Committee.

Eightieth Congress, first session (1947), Senate Resolution 33: Requiring Senators to file annual statements of income and dealings in securities. Referred to Rules Committee.

Eightieth Congress, second session (1948), S. 2086: To require certain members of legislative, judicial, and executive branches of Government to file statements relating to amount and sources of income and dealings in securities and commodities. Referred to Rules Committee.

Eighty-first Congress, first session (1949), S. 109: To require certain members of legislative, judicial and executive branches of the Government to file statements relating to amount and sources of income and dealings in securities and commodities. Referred to Rules Committee.

Eighty-second Congress, first session (1951), S. 561: To require certain members of the legislative, judicial, and executive branches of the Government to file statements relating to amount and sources of income and dealings in securities and commodities. Referred to Rules Committee.

Eighty-second Congress, second session (1952), Senate Resolution 334: Requiring annual reports showing names of persons employed by each Senator with their compensation. Referred to Rules Committee.

Eighty-third Congress, first session (1953), S. 334: To require Members of Congress, certain other officers and employees of the United States, and certain officials of political parties to file statements disclosing the amount and sources of their incomes, the value of their assets and their dealings in securities and commodities. Referred to Rules Committee.

Eighty-fourth Congress, first session (1955), S. 2747: To require Members of Congress, certain other officers and employees of the United States and certain officials of political parties to file statements disclosing the amount and sources of their incomes, the value of their assets and their dealings in securities and commodities. Referred to Rules Committee.

Eighty-fifth Congress, second session (1958), S. 3346: To require Members of Congress, certain other officers and employees of the United States, and certain officials of political parties to file statements disclosing the amount and sources of their incomes, the value of their assets, and their dealings in securities and commodities.

Eighty-sixth Congress, first session, S. 1603 (Messrs. MORSE and HUMPHREY, April 7, 1959, Rules and Administration): Requires each Member of Congress, certain other officers and employees of the United States, and certain officials of political parties, to file with the Comptroller General an annual statement disclosing the amount and source of his income and the value of the assets held by and liabilities owned by him, or jointly with his spouse, and a semiannual statement of his dealings in securities and commodities, or those of someone acting on his behalf. Provides a penalty of \$2,000 fine and/or imprisonment for not more than 5 years, for any person who willfully fails to file a report, or who willfully and knowingly files a false report.

Eighty-seventh Congress, first session, S. 165 (Messrs. MORSE and HUMPHREY, January 5, 1961, Rules and Administration). Same as S. 1603.

The PRESIDING OFFICER. The question is on agreeing to the first committee amendment.

Mr. KEFAUVER. Mr. President, I ask unanimous consent that the committee amendments may be considered en bloc.

The PRESIDING OFFICER. Is there objection to the request by the Senator from Tennessee? The Chair hears none, and it is so ordered. The question is on agreeing to the committee amendments en bloc.

The committee amendments were agreed to en bloc.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no amendment to be proposed, the question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill (H.R. 8140) was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (H.R. 8140) was passed.

Mr. KEFAUVER. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. KEATING. Mr. President, I move to lay that motion on the table.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the motion to reconsider.

The motion to lay on the table was agreed to.

DEPARTMENTS OF STATE, JUSTICE, AND COMMERCE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS, 1963

Mr. MANSFIELD. Mr. President, what is the pending question?

The PRESIDING OFFICER. The Chair lays before the Senate the unfinished business.

The Senate resumed the consideration of the bill (H.R. 12580) making appropriations for the Departments of State, Justice, and Commerce, the judiciary, and related agencies for the fiscal year ending June 30, 1963, and for other purposes.

Mr. KEFAUVER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that further proceedings under the quorum call may be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRIBUTES TO SENATOR JOHN MARSHALL BUTLER, OF MARYLAND

Mr. COTTON. Mr. President, the measure of a man can be marked by his deeds. But, with every man, certain deeds stand out above all others. No less is true here in the U.S. Senate.

The record of the senior Senator from Maryland is a good example. His activities during the past 12 years have covered a broad spectrum of legislative interests, but foremost among these has been his constant devotion to a strengthening of the Nation's sea power capability.

On many occasions, he has defined sea power as being not only the Navy and the merchant marine, but also the shipyard capacity which is necessary to build and maintain our naval and maritime fleets. In this area, most of the legislation he has proposed has been enacted into law and is now on the statute books.

He has always been influential in prodding the Executive agencies, under both this and the previous administrations, to take corrective measures. Less than 2 months ago, the Congress included in the defense appropriations bill for fiscal 1963 a provision calling for more naval shipwork in private yards rather than in naval shipyards—a proposition he has consistently advocated before the Senate and the departments downtown in the interests of saving money for the Federal Treasury and to make more funds available to correct creeping obsolescence in the naval fleet.

The Senator from Maryland is a leading authority in this field, in addition to such prominent Members of the Congress as the Senator from Washington [Mr. MAGNUSON], chairman of the Senate Committee on Commerce, and the Representative from North Carolina, chairman of the House Committee on Merchant Marine and Fisheries. He has been a recipient of the Robert L. Hague Trophy, sponsored by the American Legion and presented by the President of the United States each year, in recognition of successful efforts to advance the U.S. merchant marine—an essential element of sea power.

We can well applaud the leadership of JOHN BUTLER to insure the continuing supremacy of the United States on the high seas, and with the sine die ad-

journment, he can take with him the thanks and appreciation of all of us.

Mr. President, it has been my privilege during the 8 years I have served in the Senate to enjoy the close personal friendship of the distinguished Senator from Maryland [Mr. BUTLER].

Mr. KEFAUVER. Mr. President, will the Senator yield?

Mr. COTTON. In a moment I shall be happy to yield.

As Congress nears adjournment, and as we know Senator BUTLER is voluntarily retiring from public life, I wish to take this opportunity to say to you, Mr. President, and through you, to the Senate, and to make a matter of record, that Senator BUTLER is one of the finest, friendliest, most sincere, and dedicated men with whom I have had the privilege to serve. We shall all miss him. Whether I am in the Senate or out, I particularly shall miss him, because I shall have lost close contact and frequent association with a dear friend.

Mr. President, I yield to the distinguished Senator from Tennessee.

Mr. KEFAUVER. Mr. President, I join the distinguished Senator from New Hampshire in paying tribute to the Senator from Maryland [Mr. BUTLER]. He has served ably and with distinction. Frequently—more often than not—I have disagreed with him. He is a student. He has been diligent. He is always affable. He will be greatly missed by Senators on the Democratic side of the aisle as well as Senators on the Republican side.

The Senator is retiring voluntarily from the Senate, which happens very infrequently. Many leave the Senate, but very few retire voluntarily. I personally wish him well and assure him that he carries with him the esteem and good wishes of every Senator.

Mr. COTTON. I thank the distinguished Senator from Tennessee for his generous remarks. I yield to the distinguished Senator from New York [Mr. KEATING].

Mr. KEATING. Mr. President, having served not only in the Senate, but also on the Committee on Commerce, of which the distinguished Senator from Maryland [Mr. BUTLER] is the ranking Republican member, I have acquired great respect for Senator BUTLER's abilities and a deep affection for him personally. He is an able and conscientious Senator, who has never hesitated to take a firm and determined stand on the principles he thought right. There is no one on our side of the aisle, I suppose, with whom I may have differed more in actual voting than I have with the distinguished Senator from Maryland, but, at the same time, he has always been a friend and an associate whose company has been warmly welcome.

One of the most eloquent tributes to JOHN BUTLER came to my attention recently in an editorial which I came across in the Salisbury Times of Salisbury, Md., entitled "The Champ." The article is short and very much to the point. I should like to read it:

THE CHAMP

JOHN MARSHALL BUTLER, the first Maryland Republican to win reelection to the U.S.

Senate in modern history, is stepping out as the undefeated champ.

He often described himself as the luckiest man alive in politics—he didn't claim to be a politician and stepped without thinking on politically tender toes. In his thinking he has been somewhat to the right of McKinley and as uncompromising with pressure groups as Theodore Roosevelt.

Until his illness this fall everyone had taken it for granted that he would run again, with an excellent chance of winning. But the champ retires. Unreconstructed, uncompromising, and undefeated.

That is a wonderful characterization. He has been "a champ." We shall all miss JOHN BUTLER, his friendly, cheery methods and his tolerance for those colleagues who might disagree with him on some questions. We sincerely hope that he will return here as often as he can from his neighboring State of Maryland to visit with us. Most heartily, we wish him many years of happiness in his retirement from the Senate.

Mr. COTTON. I thank the Senator. I yield to the distinguished Senator from Delaware.

Mr. WILLIAMS of Delaware. Mr. President, I join my colleagues in paying tribute to the senior Senator from Maryland [Mr. BUTLER] upon his retirement. He has not only been a great strength in the U.S. Senate, ably representing his State of Maryland, but in a very real sense he has been and is a Senator of the United States.

I believe every American will join me in the thought that he embodies the finest traditions of this great Nation—courage, determination, moderation, and a desire to solve rather than aggravate the problems of our times.

He has served with distinction and, in fact, is the ranking minority member of the Senate Commerce Committee. His great will, enthusiasm, and intelligence have made his service on the Finance and Joint Economic Committees invaluable and his presence will greatly be missed.

We on the Del-Mar-Va Peninsula have come to look upon Senator BUTLER not only as a representative of one of our neighboring States, but more as a Senator from the peninsula. I know that in his departure he will be missed, not only by all the people on the peninsula, but also by those in his great State of Maryland, which he has so ably represented, as well as by the people of the other 49 States in our country. I join Senators in paying my respect to him at this time.

I feel certain, however, that he will return often to this great body and give us the benefit of his advice, his counsel, and his understanding.

Mr. COTTON. I thank the Senator. I yield to the Senator from Massachusetts.

Mr. SALTONSTALL. Mr. President, in a very few words I wish to join in making clear that I shall miss our colleague from Maryland, Senator JOHN BUTLER. My contacts with him came not on committees, but with relation to the shipbuilding industry, shipping, and the maritime interests throughout our country on the east coast and on the west coast. Together we have endeavored to buildup our shipping industry not only for commercial purposes,

8. LEGISLATIVE ACCOMPLISHMENTS. Sen. Mansfield inserted a summary of significant legislative accomplishments during the 87th Congress, including those in the field of agriculture. pp. 21031-52
9. COFFEE. Received from the President for ratification the International Coffee Agreement for 1962. p. 20930
10. ELECTRIFICATION. Received from the Federal Power Commission a copy of a publication, "Typical Electric Bills, 1962." p. 20930
11. LOANS. Passed without amendment S. 3024, to extend the maximum maturity of Veterans' Administration guaranteed or insured loans from 30 to 35 years. p. 21064
12. INSPECTION; BRIDGES. The Foreign Relations Committee reported with amendments H.R. 683, to authorize the Donna-Rio Bravo Bridge Co. to construct a bridge across the Rio Grande river near Donna, Tex. (S. Rept. 2278). p. 20931
13. HEALTH; VACCINATIONS. Passed without amendment H. R. 10541, the proposed Vaccination Assistance Act of 1962. This bill will now be sent to the President. p. 21011
14. FOREIGN AID. Sen. Proxmire criticized a provision in the foreign aid appropriation bill giving the President discretion to extend aid to Yugoslavia and inserted several items. pp. 21029-30
Sen. Humphrey urged support for Senate amendments increasing appropriations for the foreign aid program. pp. 21081-2
15. WILDLIFE. Passed with amendment H. J. Res. 489, to provide for protection of the golden eagle. pp. 21091-5
16. FARM LABOR. Sen. Humphrey inserted and commended an article praising passage of legislation to provide health clinics and other health service for migratory workers. pp. 21080-1

HOUSE

17. AGRICULTURAL APPROPRIATION BILL, 1963. Acted on amendments in disagreement on this bill, H. R. 12648 (pp. 21136-9). Receded from disagreement to Senate amendment No. 1, deleting provision for acquisition of sites by ARS by donation, exchange, or purchase at a nominal cost not to exceed \$100 (p. 21136). By a vote of 339 to 5, agreed to Senate amendment No. 2 with an amendment providing funds for ARS for research and demonstrations on the production and utilization of agricultural products, home economics, and related research and services (pp. 21136-9). Concurred in Senate amendment No. 6, to delete provision of \$760,000 for ARS for construction of facilities and acquisition of the necessary land therefor by purchase, donation, or exchange (p. 21139). Insisted on disagreement to all other amendments formerly reported in disagreement (p. 21139).
18. FOOD CONGRESS. Passed without amendment S. 3679, authorizing an appropriation to enable the U. S. to extend an invitation to the Food and Agriculture Organization of the U. N. to hold a World Food Congress in the U. S. in 1963. This bill will now be sent to the President. A similar bill, H. R. 13307, was tabled. pp. 21131-2

19. PERSONNEL. Concurred in the Senate amendments to H. R. 8140, to strengthen the criminal laws relating to bribery, graft, and conflicts of interest. This bill will now be sent to the President. pp. 21130-1
20. ELECTRIFICATION. Concurred in the Senate amendment to H. R. 10708, to amend the Rural Electrification Act of 1936, so as to authorize REA to finance communication facilities for the transmission of sounds, signals, pictures, writing, or signs as well as voice. This bill will now be sent to the President. p. 21133
21. SCHOOL LUNCH PROGRAM. By a vote of 257 to 81, agreed to the conference report on H. R. 11665, to amend the National School Lunch Act so as to revise the formula for apportioning cash assistance funds to the States. This bill will now be sent to the President. (See Digest 179 for a summary.) pp. 21155-7
22. PUBLIC WORKS APPROPRIATION BILL, 1963. Received the conference report on this bill, H. R. 12900 (H. Rept. 2531)(pp. 21184-92). As reported from conference, the bill includes \$400,000,000 for the accelerated public works program. The Senate report on this bill includes the following statements:

"The authorizing legislation contains restrictions on the amounts of money that can be received by areas. Specifically, the act provides that at least \$300 million of the \$900 million authorized must be allocated for projects in areas designated under section 5(b) of the Area Redevelopment Act. In keeping with the provisions of the authorizing legislation, the committee desires that the funds appropriated in this act be prorated in accordance with the restrictions in the authorizing legislation."

"The committee notes that a large number of agencies will participate in the program, and in most instances their activity will represent a relatively modest increase in regular programs for which administrative funds have been or will be provided in the regular appropriations for such agencies. In a few cases, it is clear that additional administrative funds will be required. ...

"In view of the fact that the committee was unable to secure from the witnesses a specific program by agencies, it does not feel that it is feasible to establish specific amounts for administrative costs. However, the committee will expect the Bureau of the Budget to review all requests for allocations of administrative funds closely, and to assure that in no case are they in excess of amounts required for additional workload generated by the public works acceleration program, or disproportionately high as compared to the regular administrative costs of the programs increased or accelerated. In no case are these funds to be used merely to circumvent administrative expense limitations established in the various appropriation acts for these agencies."
23. FARM PROGRAM. Rep. Cooley reviewed the legislative accomplishments of the 87th Congress in farm legislation and said, "I have never known a Secretary of Agriculture who was a greater champion of farmers than Orville L. Freeman." pp. 21148-9
24. ASC COMMITTEES. Rep. Wilson, Ind., commended the ASC county committeemen saying, "I know of no more dedicated group of men than the 9,000 county committeemen and the 90,000 community committeemen throughout this Nation who are attempting ... to make democracy work." p. 21223
25. PATENTS. Concurred in the Senate amendments to H. R. 12513, to provide for public notice of settlements in patent interferences. This bill will now be sent to the President. pp. 21132-3

detailed nature thereof would not only be conducive to administrative difficulties, but the provision itself is not necessary in view of the broad scope of section 4(1).

Section 4(3)(B) requires, in effect, that whenever the 10-percent investment limitation is exceeded, "no amendment shall be made to the charter, and no substantial change may be made in the [bank service] corporation's capitalization, scope of operations, or schedule of charges for services without the approval of" the Federal supervisory agency concerned. It is suggested that the language just quoted be changed to read "no substantial change may be made in the capitalization or operations of the corporation without the approval of such agency." This simplified provision would seem entirely adequate to protect the investing banks.

Reports and examinations: Under section 4(3)(A) of the bill, the Federal supervisory agency concerned is entitled to reports from the bank service corporation whenever the bank's total investment therein exceeds the 10-percent limitation. The Board believes that the purpose of a provision for reports from a bank service corporation would be better effectuated if the provision were broadened to include also examinations of such corporations and certain regulatory safeguards, and if the provision, as so broadened, were made applicable irrespective of the 10-percent limitation. This might be accomplished by deleting section 4(3)(A) of the bill and adding at the end of section 3 a new sentence such as the following:

"No investment shall be made pursuant to this section unless the bank first obtains from the bank service corporation an agreement that it will permit examiners appointed by the Federal supervisory agency concerned to make such examination of the corporation as the agency may deem necessary, will make such reports to the agency as it may require, and will comply with such regulations as the agency may prescribe as necessary or appropriate to assure both to the bank and the corporation adequate systems of insurance protection and internal audit and control."

Relations with other data processing organizations: As pointed out above some banks have already availed themselves of services of the kinds contemplated by H.R. 8874 for bank service corporations, through contractual arrangements with data processing centers operated by private commercial concerns. It would seem reasonable to expect the number of such banks to increase. The Board believes that its suggestion above with respect to examinations, reports, and regulations in the case of bank service corporations should be made applicable as well to other data processing organizations serving banks. If the foregoing suggested addition to section 3 of the bill should be adopted, the latter suggestion might be accomplished by adding to the bill a new section 5 along the following lines:

"SEC. 5. No bank of a kind referred to in section 3 of this act shall enter into any contract or other arrangement for the purpose of obtaining services described in section 2(a) of this act from any person other than a bank service corporation, unless the bank first obtains from such person an agreement of the kind required by the last sentence of section 3 of this act. As used in this section 'person' includes an individual, corporation, partnership, association, and any other organization whether or not incorporated."

In addition to the above suggestions, the Board's staff will be glad to discuss with your staff a few minor suggestions relating solely to technical or drafting matters.

It is hoped that the foregoing may be helpful in connection with such consideration as your committee may give to H.R. 8874.

Sincerely yours,

WM. MCC. MARTIN, Jr.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM,
Washington, July 25, 1962.

Hon. BRENT SPENCE,
Chairman, Committee on Banking and Currency,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the Board's views on the substitute amendment to H.R. 8874, adopted yesterday by Subcommittee No. 1 of the House Banking and Currency Committee.

As indicated to you in the Board's report submitted under date of March 1, the Board favors the objective of this bill. The substitute amendment adopted by the subcommittee in substance would carry out the suggestions made by the Board in its earlier report, and the Board is especially pleased to note that the new bill includes in section 5 provisions that are needed to insure adequate regulation and examination of bank services performed off the bank's premises. The Board, accordingly, recommends enactment of the bill as amended.

Sincerely yours,

WM. MCC. MARTIN, Jr.

FEDERAL DEPOSIT INSURANCE CORPORATION,
OFFICE OF THE CHAIRMAN,

Washington, April 25, 1962.

Hon. BRENT SPENCE,
Chairman, Committee on Banking and Currency,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The Corporation has been requested to express its views on H.R. 8874, a bill introduced in the House of Representatives on August 23, 1961, by Mr. SPENCE. The proposed bill would permit national banks and State member banks, when authorized by State law, to invest not exceeding 10 percent of the bank's capital and surplus, or such additional sum as might be approved by the appropriate Federal supervisory agency, in stock in a bank service corporation, established to provide clerical and bookkeeping services to the banks participating in the establishment of the corporation and in the services to be rendered by the corporation.

The capacity of the banking system, to adequately service the needs of commerce and industry, depends on its ability to expeditiously process daily a mountainous volume of paper instruments evidencing approximately 95 percent of all business transactions. The bank clearing system is under heavy strain due to the tremendous expansion in the national economy and also by reason of the very great enlargement in bank services which has taken place during the past 15 years.

The electronic computer, with related equipment, is ideally suited to the accounting needs of banks, but unfortunately is so costly that only the large banks can afford the machines. Were the small banks, and 10,000 of the 13,400 banks of the country are classed as small banks, unable to utilize the electronic computer because of cost, they would be placed at a serious disadvantage and ultimately have to become a part of a larger banking system in order to survive.

Fortunately, the great speed and capabilities of computers make it possible for one installation to perform the accounting function for several smaller banks located within a county or regional area possessed of good communications. By sharing the expense,

two or more banks may enjoy the benefits of a computer system on a par with large banks. For these reasons we should recommend that national banks, and insured State banks when authorized by State law, be enabled to invest in bank service corporations up to 10 percent of the bank's capital and surplus, without prior approval of Federal bank supervisory agencies, and to such additional amount, and under such conditions, as the Federal bank supervisory agencies may permit.

The Corporation endorses in principle the proposal outlined in the subject bill. However, it offers for consideration the following amendments thereto that appear to improve the proposal:

"(a) For purposes of more accurately defining the functions of the bank service corporation, it is recommended that the word 'accounting' be added to line 2 of page 2 (sec. 2(a)) between the words 'clerical' and 'or.'

"(b) The definition of Federal supervisory agency at line 11 through line 15 on page 2 (sec. 2(d)) should be expanded to include the Federal Deposit Insurance Corporation for insured State nonmember banks.

"(c) The authorization appearing in section 3 on page 2 should be extended to include 'any insured State nonmember bank.'

"(d) There should be added a new section—'Section 5'—which would provide for the examination, visitation and supervision by State and Federal bank supervisory authorities to the same extent as the banks, or any of them, which are serviced by the bank service corporation, are subject.

"(e) There should be added another new section, which should provide that no insured bank could contract for services, such as those provided by a bank service corporation, unless the servicing party agrees to and, in fact, does permit the State and Federal bank supervisory authorities to exercise the right of visitation in the same manner and to the same extent as contemplated in the preceding paragraph."

With these amendments, the Corporation would favor the bill's enactment. We would be glad to have our Legal Division assist your staff in drafting the provisions of these amendments, if they meet with your approval.

We have been advised by the Bureau of the Budget that it has no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

ERLE COCKE, SR., Chairman.

FEDERAL DEPOSIT INSURANCE CORPORATION,
OFFICE OF THE CHAIRMAN,

Washington, July 24, 1962.

Hon. BRENT SPENCE,
Chairman, Committee on Banking and Currency,
House of Representatives,
Washington, D.C.

DEAR MR. SPENCE: In accordance with your request, we have examined the committee print of H.R. 8874, dated July 24, 1962, as amended by Subcommittee No. 1, a bill to authorize certain banks to invest in corporations whose purpose is to provide clerical services for them, and for other purposes, and recommend its enactment.

Sincerely yours,

ERLE COCKE, SR., Chairman.

HOUSE CONCURRENT RESOLUTION 570—RESOLUTION ON BERLIN

Mr. COLMER, from the Committee on Rules, reported the following privileged resolution (H. Con. Res. 570, Rept. No.

2528), which was referred to the House Calendar and ordered to be printed:

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the concurrent resolution (H. Con. Res. 570) expressing the sense of the Congress with respect to the situation in Berlin. After general debate, which shall be confined to the concurrent resolution, and shall continue not to exceed two hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Foreign Affairs, the concurrent resolution shall be considered as having been read for amendment. No amendment shall be in order to said concurrent resolution except amendments offered by the direction of the Committee on Foreign Affairs and such amendments shall not be subject to amendment. At the conclusion of the consideration of the concurrent resolution for amendment, the Committee shall rise and report the concurrent resolution to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the concurrent resolution and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

STRENGTHENING CRIMINAL LAWS RELATING TO BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

Mr. CELLER. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 8140) to strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes, with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Page 2, in the ninth line following line 2, strike out "Exemption of retired officers of the Armed Forces" and insert, "Exemption of retired officers of the uniformed services".

Page 2, line 9, after "thereof", insert "including the District of Columbia".

Page 7, line 13, after "executive" insert "or legislative".

Page 7, line 20, after "basis", insert ", or a part-time United States Commissioner. Notwithstanding the next preceding sentence, every person serving as a part-time local representative of a Member of Congress in the Member's home district or State shall be classified as a special Government employee".

Page 8, line 4, after "is", insert "voluntarily".

Page 8, line 8, after "213.", insert "A Reserve officer of the Armed Forces or an officer of the National Guard of the United States who is serving involuntarily shall be classified as a special Government employee."

Page 8, line 9, strike out "203, 205," and insert "205 and".

Page 10, line 5, after "matter", insert "involving a specific party or parties".

Page 10, lines 10 and 11, strike out "which is or within two years has been a subject of his official responsibility, or (3)".

Page 10, line 13, strike out "(3)" and insert "(2)".

Page 10, line 14, strike out all after "employee" down to and including "days" in line 16 and insert "has served in such department or agency no more than sixty days

during the immediately preceding period of three hundred and sixty-five consecutive days".

Page 12, lines 2 and 3, after "matter", insert "involving a specific party or parties".

Page 12, lines 7 and 8, strike out "which is or within two years has been a subject of his official responsibility, or (3)".

Page 12, line 10, strike out "(3)" and insert "(2)".

Page 12, line 11, strike out all after "who" down to and including "days" in line 13 and insert "has served in such department or agency no more than sixty days during the immediately preceding period of three hundred and sixty-five consecutive days".

Page 12, line 14, strike out all after "employee" down to and including "proceedings" in lines 18 and 19 and insert ", if not inconsistent with the faithful performance of his duties, from acting without compensation as agent or attorney for any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings".

Page 12, line 23, strike out "or otherwise aiding or assisting".

Page 12, line 24, after "whom" insert ", or for any estate for which,".

Page 13, strike out lines 8 to 14, inclusive, and insert:

"Nothing herein or in section 203 prevents a special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with or for the benefit of, the United States provided that the head of the department or agency concerned with the grant or contract shall certify in writing that the national interest so requires."

Page 13, line 20, strike out "Armed Forces" and insert "uniformed services".

Page 13, line 22, strike out "Armed Forces" and insert "uniformed services".

Page 14, line 13, after "matter", insert "involving a specific party or parties".

Page 14, lines 19 and 20, strike out "two years" and insert "one year".

Page 14, line 20, strike out "last".

Page 15, line 1, after "matter", insert "involving a specific party or parties".

Page 15, line 4, strike out "two years" and insert "one year".

Page 15, line 5, strike out "his employment" and insert "such responsibility".

Page 15, line 7, after "both", insert ": Provided, That nothing in subsection (a) or (b) prevents a former officer or employee, including a former special Government employee, with outstanding scientific or technological qualifications from acting as attorney or agent or appearing personally in connection with a particular matter in a scientific or technological field if the head of the department or agency concerned with the matter shall make a certification in writing, published in the Federal Register, that the national interest would be served by such action or appearance by the former officer or employee."

Page 15, strike out lines 8 to 17, inclusive.

Page 15, line 18, strike out "(d)" and insert "(c)".

Page 16, line 18, strike out "subsections (c) and (d)" and insert "subsection (c)".

Page 17, line 3, strike out "Government action, proceeding," and insert "judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest,".

Page 17, line 4, after "spouse", insert "minor".

Page 17, line 5, strike out "business".

Page 17, line 15, strike out "action, proceeding," and insert "judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest,".

Mr. GROSS. Mr. Speaker, I ask unanimous consent that further reading of the amendments be dispensed with so that we may have some time in which to discuss the bill.

The SPEAKER. Is there objection to the request of the gentleman from Iowa?

Mr. McCULLOCH. Mr. Speaker, reserving the right to object—and I shall not object—if the able Chairman of the Committee on the Judiciary of the House will give us a brief explanation of the bill, it will be most helpful, in my opinion.

Mr. CELLER. Mr. Speaker, I will state to the Members of the House that this bill passed the Senate unanimously. It was passed by the House under suspension of the rules. If there were any objections, I did not hear them.

It codifies and brings up to date all our conflict-of-interest statutes. The Senate amendments in the main correct typographical or grammatical errors. The amendments in substance do not add very much to the bill and the substance of the bill remains practically unchanged.

The principal Senate amendments involve so-called "special Government employees"; that is, persons who serve on an intermittent or temporary basis for not more than 130 days in any year. Both the House and Senate versions of the bill recognize that because of their special character and the fact that they must maintain their private business interests, restrictions on these people should properly be less rigorous than those on full-time employees. As amended by the Senate, the restrictions on special Government employees obtain only when such employee has personally participated in a matter for the Government, or when the matter is before his own department and he has worked on it more than 60 days in the preceding year.

The Senate amendment provides that the term "special Government employee" shall include part-time U.S. Commissioners and part-time employees who are employed by Members of Congress in their home district. If such a special Government employee participated personally and substantially in a particular matter for the Government, he is barred from acting for a private party in that particular matter.

For the most part the remaining Senate amendments are not of major significance.

Mr. McCULLOCH. Mr. Speaker, further reserving the right to object—and I shall not object—I should like to say to the Members of the House that H.R. 8140, as passed by the House, is the result of lengthy labor by a dedicated staff, by much study of the bar associations in various localities in the United States and the constant attention of the chairman, the able chairman, if you please, of our committee; of the gentleman from Michigan, GEORGE MEADER, and the gentleman from New York, JOHN LINDSAY, and the other members of the subcommittee.

I think it is a fine tribute to the Members of the House that this legislation, as difficult as it is, was accepted by the

Senate with but few minor changes. I think that this legislation is needed. It was recommended in effect by the previous administration and in effect it has been recommended by the present administration.

Mr. CELLER. Mr. Speaker, will the gentleman yield?

Mr. McCULLOCH. I yield to the gentleman from New York.

Mr. CELLER. The gentleman from Ohio [Mr. McCULLOCH] contributed greatly to the preparation and the process of holding hearings and in the passage of this bill. Likewise, the gentleman from Michigan [Mr. MEADER] rendered paramount service. The gentleman from New York [Mr. LINDSAY] worked most diligently on the matter. Both he and I appeared before the Bar Association of the City of New York, which bar association is entitled to a great deal of credit for the fine work they have rendered in this matter. The American Bar Association has also participated in a very fine spirit. I would, with pardonable pride as far as I am concerned, and doing justice to other members of this committee, say that this should be known as the Celler-McCulloch-Lindsay-Meader bill.

Mr. McCULLOCH. I thank the gentleman. I am glad to be associated with him.

Mr. CURTIS of Missouri. Mr. Speaker, will the gentleman yield?

Mr. McCULLOCH. I yield.

Mr. CURTIS of Missouri. I am not going to object to this bill. I think it is now clear that these amendments are germane to the bill.

Mr. CELLER. Absolutely.

Mr. CURTIS of Missouri. I commend both the chairman and the ranking minority member for the manner in which they have explained this to the House and given the proper legislative background. My reason for raising these questions is not just capricious. It is important for the House to know what these amendments are. I think the better procedure would be to have the Senate amendments printed the day before the matter is brought up. Certainly the manner in which this has been handled is highly commendable. I shall not object.

Mr. LINDSAY. Mr. Speaker, I rise in order to urge the House to accept the Senate version of H.R. 8140, the conflict-of-interest bill. If we do this we will insure passage of the bill. It is far too important a measure to take any chances with failure this late in the session. The other body made only relatively slight changes in the House-passed bill.

I would like to express my appreciation to the Senator from New York [Mr. KEATING] for his special efforts as a member of the Senate Judiciary Committee to bring the bill out intact.

This legislation marks almost the end of the road of 5 years of work on my part. I was a member of the special committee of the Association of the Bar of New York which, with funds supplied by the Ford Foundation, produced a remarkable volume on conflict of interest in the Federal branch, and drafted a bill. I have pressed for the enactment of that

bill ever since I have been a Member; and, therefore, this action today by the Congress is one of personal gratification as well as a high-water mark in the improvement of a body of law long in need of reform.

I should like to extend my congratulations to the chairman of the House Judiciary Committee, the gentleman from New York [Mr. CELLER], and to the staff of the committee and also to the Deputy Attorney General of the United States, Nicholas deB. Katzenbach, for continuing cooperation and leadership in this matter.

Certainly, the Congress and the country owe a vote of thanks also to the membership of the bar association committee and its staff for their persistence in pressing for this legislation. I should particularly like to take note of the efforts of the chairman of the committee Roswell Perkins, my constituent and friend.

Mr. LESINSKI. Mr. Speaker, I rise in support of S. 3631. As a former chairman of the Subcommittee on Census and Government Statistics and cosponsor I continue to maintain my interest in the statistical programs of the Federal Government. I am deeply concerned with the far-reaching effect on such programs of the Supreme Court decision in the case of *St. Regis Paper Co.* against the United States last fall. If remedial legislation is not enacted, I believe that irreparable damage will be done to the entire Federal statistical system.

Even though existing legislation provides penalties for failure to respond to some census inquiries, it is well known that the entire census statistical program is essentially based on the voluntary cooperation of the many varied respondents. Confidence has been built up over a period of years of faithful adherence to the statement shown on many of the schedules and questionnaires: "Your report is confidential and only sworn census employees will have access to it. It cannot be used for purposes of taxation, investigation, or regulation."

I would oppose any action seeking to impede the investigations of the Federal Trade Commission or the Antitrust Division of the Department of Justice, but this proposed legislation will not interfere with their investigations. In fact, it is essential to the successful prosecution of many of their cases. It has been stated that in monopoly and merger cases, which come before the Department of Justice, the question of the market and the position of the monopoly in that market are crucial. Census data furnishes the most reliable figures upon which determinations are made. It is obvious that, without full and free reporting from all companies, census figures will be incomplete and we will not know what portion of the market or anything else they represent.

This legislation would not in any way prevent companies from voluntarily furnishing copies of their census reports to any agency requesting them. Assured of confidentiality, companies will have no reason not to retain copies of their reports and in many instances would make them available voluntarily as they have

in the past. Under the present situation, without this legislation many companies are undoubtedly following the advice contained in the Supreme Court decision, that the law does not require the firm to keep a copy of the census report. Thus, there may be no copies to be furnished voluntarily or otherwise.

The understandable resentment of the business world generally toward the Supreme Court decision does not mean that businessmen need the protection of confidentiality. It is based largely on the "broken promise" aspect of the decision. As Mr. Justice Black in the dissenting opinion stated, "It is no less good morals and good law that the Government should turn square corners in dealing with the people than that the people should turn square corners in dealing with the Government." I believe it is essential that we assure the business community that the Government does turn square corners in dealing with them; we can best do that in this instance by the prompt approval of this remedial legislation.

Mr. Speaker, I urge passage of this legislation.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

The Senate amendments were concurred in.

A motion to reconsider was laid on the table.

Mr. CELLER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to extend their remarks in the Record on the bill just considered.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

WORLD FOOD CONGRESS

Mr. FASCELL. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (S. 3679) authorizing an appropriation to enable the United States to extend an invitation to the Food and Agriculture Organization of the United Nations to hold a World Food Congress in the United States in 1963. This bill is similar to H.R. 13307, unanimously reported yesterday by the Committee on Foreign Affairs.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Florida?

Mr. GROSS. Reserving the right to object, Mr. Speaker, may we have a brief explanation of what is proposed?

Mr. FASCELL. I will be very happy to answer the request of the gentleman from Iowa.

This is an authorization which would authorize the appropriation of \$300,000 to allow the United States to act as a host country in hosting a World Food Congress which is expected to be held in the United States next year. This is the first such Congress which has been held since the establishment of the Food and Agriculture Organization of the United Nations. The Congress is being called

pursuant to a resolution of that body. It will come at the time of the 20th anniversary of the establishment of the Food and Agriculture Organization; the 20th anniversary of the Hot Springs Conference.

May I add further that there is precedent for this type of legislation. In the past we have authorized the expenditure of funds to host congresses of other specialized agencies.

Mr. GROSS. The total expenditure on the part of the United States is \$300,000, and the total expenditure for the conference is how much?

Mr. FASCELL. It is estimated that the total expenditures for the Conference will be in the neighborhood of \$1 million. The U.S. share as the host country would be in the neighborhood of \$300,000. That is the limit of this authorization.

Mr. GROSS. The restaurants, hotels and other such places in Washington, D.C., ought to do pretty well on a million dollars.

Mr. FASCELL. I would assume they would think it was a great boon.

Mr. GROSS. Mr. Speaker, I withdraw my reservation of objection.

Mr. JUDD. Mr. Speaker, reserving the right to object and, of course, I shall not object because this is a meritorious bill. I do have one comment to make. I wish the Conference were to be held out in the Midwest or in some other agricultural part of our country rather than in Washington, D.C. Five years ago, the House approved a resolution introduced by myself extending a similar invitation to the World Health Organization to hold its annual World Health Assembly in the United States. We raised additional money locally to have it held in my hometown of Minneapolis. We have had amazingly good reports from the delegates from almost 100 countries coming to the United States from all over the world, pleased that they were able to see something more in the United States than just New York and Washington. It was good for these delegates to get to know rank and file Americans in their own homes. It was good for the people out in the Midwest to meet these distinguished leaders from every part of the world. It was to everybody's benefit. I do wish that when they hold world Conferences in the United States, especially one dealing with a subject like food, they would hold the Conference in some city like Des Moines or Omaha or Kansas City or somewhere else in our great agricultural areas, where the visitors would be able to see and take home with them the story of what freemen can and will do on their own initiative and enterprise, using modern agricultural technology to increase food production.

Mr. FASCELL. I would say, as the gentleman from Minnesota knows, the bill was amended to read that the Conference should be held in the United States without specifying any particular place, which bears on the very point that the gentleman raises. I would trust, therefore, that good consideration would be given by the department to the very fine points that the gentleman has raised.

Mr. JUDD. I thank the gentleman.

Mr. GROSS. Mr. Speaker, will the gentleman yield?

Mr. JUDD. I yield to the gentleman from Iowa.

Mr. GROSS. It is too bad that the \$10 million glorified fish bowl in Washington will not be completed for the edification of the foreigners.

Mr. JUDD. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Florida?

There was no objection.

The Clerk read the Senate bill, as follows:

Whereas the President, in giving his full endorsement and support of the United States Government's food-for-peace program and for the freedom-from-hunger campaign of the Food and Agriculture Organization of the United Nations, recognized the necessity for emphasizing the willingness of the United States Government to share its food abundance and agricultural knowledge; and

Whereas the Food and Agriculture Organization of the United Nations pursuant to a resolution of the tenth FAO Conference authorized the Director-General to make preparations for a World Food Congress in 1963 to mark the midpoint of the five-year worldwide freedom-from-hunger campaign and the twentieth anniversary of the Hot Springs Conference, which resulted in the establishment of the FAO; and

Whereas the freedom-from-hunger campaign in the United States is sponsored by the American Freedom From Hunger Foundation, Incorporated, and by the American Food for Peace Council through its Freedom-From-Hunger Committee; and

Whereas the United States food-for-peace program and the FAO free-from-hunger campaign are both directed toward the promotion of international cooperation and good will through the alleviation of hunger and malnutrition; and

Whereas the Congress will bring together a wide cross section of participants in these activities, review the progress of the campaign, focus attention on current and future problems involved in providing adequate food to meet the needs of the world's rapidly expanding population, and consider and recommend measures and policies necessary for this purpose; and

Whereas it is particularly fitting that the United States of America should cooperate with the FAO to convene a World Food Congress to further the programs of both the food-for-peace program and the freedom-from-hunger campaign; and

Whereas the United States of America as the inviting government is expected to provide the conference facilities and to pay certain expenses not borne by the FAO: Therefore

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is authorized to be appropriated to the Department of State, out of any money in the Treasury not otherwise appropriated, a sum not to exceed \$300,000 for the purpose of defraying the expenses incident to organizing and holding the World Food Congress in the United States. Funds appropriated pursuant to this authorization shall be available for advance contribution or reimbursement to the Food and Agriculture Organization of the United Nations for certain costs incurred by the Organization in holding the World Food Congress in the United States and shall be available for expenses incurred by the Department of State, on behalf of the United States as host government, including personal services without regard to civil serv-

ice and classification laws; employment of aliens; printing and binding, without regard to section 11 of the Act of March 1, 1919 (44 U.S.C. 11); travel expenses; rent of quarters by contract or otherwise; hire of passenger motor vehicles; and official functions and courtesies.

SEC. 2. The Secretary of State is authorized to accept and use contributions of funds, property, services, and facilities for the purpose of organizing and holding the World Food Congress in the United States.

The bill was ordered to be read a third time, was read the third time and passed, and a motion to reconsider was laid on the table.

A similar House bill (H.R. 13307) was laid on the table.

REQUIRING FILING OF SETTLEMENTS IN PATENT INTERFERENCES

Mr. TOLL. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 12513) to provide for public notice of settlements in patent interferences, and for other purposes, with an amendment of the Senate thereto and agree to the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Strike out all after the enacting clause and insert "That section 135 of title 35, United States Code, is amended by designating the first and second paragraphs thereof as subsections (a) and (b), respectively, and by adding thereto the following subsection:

"(c) Any agreement or understanding between parties to an interference, including any collateral agreements referred to therein, made in connection with or in contemplation of the termination of the interference, shall be in writing and a true copy thereof filed in the Patent Office before the termination of the interference as between the said parties to the agreement or understanding. If any party filing the same so requests, the copy shall be kept separate from the file of the interference, and made available only to Government agencies on written request, or to any person on a showing of good cause. Failure to file the copy of such agreement or understanding shall render permanently unenforceable such agreement or understanding and any patent of such parties involved in the interference or any patent subsequently issued on any application of such parties so involved. The Commissioner may, however, on a showing of good cause for failure to file within the time prescribed, permit the filing of the agreement or understanding during the six-month period subsequent to the termination of the interference as between the parties to the agreement or understanding.

"The Commissioner shall give notice to the parties or their attorneys of record, a reasonable time prior to said termination, of the filing requirement of this section. If the Commissioner gives such notice at a later time, irrespective of the right to file such agreement or understanding within the six-month period on a showing of good cause, the parties may file such agreement or understanding within sixty days of the receipt of such notice.

"Any discretionary action of the Commissioner under this subsection shall be reviewable under section 10 of the Administrative Procedure Act."

Mr. McCULLOCH (during the reading of the Senate amendments). Mr. Speaker, I ask unanimous consent that



Public Law 87-849
87th Congress, H. R. 8140
October 23, 1962

An Act

76 STAT. 1119.

To strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) so much of chapter 11 of title 18 of the United States Code as precedes section 214 is amended to read as follows:

Bribery, graft,
and conflicts
of interest.
18 USC 201
et seq.

“CHAPTER 11—BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

- “Sec.
- “201. Bribery of public officials and witnesses.
- “202. Definitions.
- “203. Compensation of Members of Congress, officers and others, in matters affecting the Government.
- “204. Practice in Court of Claims by Members of Congress.
- “205. Activities of officers and employees in claims against and other matters affecting the Government.
- “206. Exemption of retired officers of the uniformed services.
- “207. Disqualification of former officers and employees in matters connected with former duties or official responsibilities; disqualification of partners.
- “208. Acts affecting a personal financial interest.
- “209. Salary of Government officials and employees payable only by United States.
- “210. Offer to procure appointive public office.
- “211. Acceptance or solicitation to obtain appointive public office.
- “212. Offer of loan or gratuity to bank examiner.
- “213. Acceptance of loan or gratuity by bank examiner.
- “214. Offer for procurement of Federal Reserve bank loan and discount of commercial paper.
- “215. Receipt of commissions or gifts for procuring loans.
- “216. Receipt or charge of commissions or gifts for farm loan, land bank, or small business transactions.
- “217. Acceptance of consideration for adjustment of farm indebtedness.
- “218. Voiding transactions in violation of chapter; recovery by the United States.

“§ 201. Bribery of public officials and witnesses

“(a) For the purpose of this section:

“‘public official’ means Member of Congress, or Resident Commissioner, either before or after he has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror; and

“‘person who has been selected to be a public official’ means any person who has been nominated or appointed to be a public official, or has been officially informed that he will be so nominated or appointed; and

“‘official act’ means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in his official capacity, or in his place of trust or profit.

“(b) Whoever, directly or indirectly, corruptly gives, offers or promises anything of value to any public official or person who has been selected to be a public official, or offers or promises any public official or any person who has been selected to be a public official to give anything of value to any other person or entity, with intent—

“(1) to influence any official act; or

“(2) to influence such public official or person who has been selected to be a public official to commit or aid in committing, or collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

“(3) to induce such public official or such person who has been selected to be a public official to do or omit to do any act in violation of his lawful duty, or

“(c) Whoever, being a public official or person selected to be a public official, directly or indirectly, corruptly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself or for any other person or entity, in return for:

“(1) being influenced in his performance of any official act; or

“(2) being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

“(3) being induced to do or omit to do any act in violation of his official duty; or

“(d) Whoever, directly or indirectly, corruptly gives, offers, or promises anything of value to any person, or offers or promises such person to give anything of value to any other person or entity, with intent to influence the testimony under oath or affirmation of such first-mentioned person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or with intent to influence such person to absent himself therefrom; or

“(e) Whoever, directly or indirectly, corruptly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself or for any other person or entity in return for being influenced in his testimony under oath or affirmation as a witness upon any such trial, hearing, or other proceeding, or in return for absenting himself therefrom—

“Shall be fined not more than \$20,000 or three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than fifteen years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.

“(f) Whoever, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly gives, offers, or promises anything of value to any public official, former public official, or person selected to be a public official, for or because of any official act performed or to be performed by such public official, former public official, or person selected to be a public official; or

“(g) Whoever, being a public official, former public official, or person selected to be a public official, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself for or because of any official act performed or to be performed by him; or

“(h) Whoever, directly or indirectly, gives, offers, or promises anything of value to any person, for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or for or because of his absence therefrom; or

“(i) Whoever, directly or indirectly, asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself for or because of the testimony under oath or affirmation given or to be given by him as a witness upon any such trial, hearing, or other proceeding, or for or because of his absence therefrom—

“Shall be fined not more than \$10,000 or imprisoned for not more than two years, or both.

“(j) Subsections (d), (e), (h), and (i) shall not be construed to prohibit the payment or receipt of witness fees provided by law, or the payment, by the party upon whose behalf a witness is called and receipt by a witness, of the reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance at any such trial, hearing, or proceeding, or, in the case of expert witnesses, involving a technical or professional opinion, a reasonable fee for time spent in the preparation of such opinion, and in appearing and testifying.

“(k) The offenses and penalties prescribed in this section are separate from and in addition to those prescribed in sections 1503, 1504, and 1505 of this title.

62 Stat. 769.

“§ 202. Definitions

“(a) For the purpose of sections 203, 205, 207, 208, and 209 of this title the term ‘special Government employee’ shall mean an officer or employee of the executive or legislative branch of the United States Government, of any independent agency of the United States or of the District of Columbia, who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis, or a part-time United States Commissioner. Notwithstanding the next preceding sentence, every person serving as a part-time local representative of a Member of Congress in the Member’s home district or State shall be classified as a special Government employee. Notwithstanding section 29 (c) and (d) of the Act of August 10, 1956 (70A Stat. 632; 5 U.S.C. 30r (c) and (d)), a Reserve officer of the Armed Forces, or an officer of the National Guard of the United States, unless otherwise an officer or employee of the United States, shall be classified as a special Government employee while on active duty solely for training. A Reserve officer of the Armed Forces or an officer of the National Guard of the United States who is voluntarily serving a period of extended active duty in excess of one hundred and thirty days shall be classified as an officer of the United States within the meaning of section 203 and sections 205 through 209 and 218. A Reserve officer of the Armed Forces or an officer of the National Guard of the United States who is serving involuntarily shall be classified as a special Government employee. The terms ‘officer or employee’ and ‘special Government employee’ as used in sections 203, 205, 207 through 209, and 218, shall not include enlisted members of the Armed Forces.

“(b) For the purposes of sections 205 and 207 of this title, the term ‘official responsibility’ means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action.

“§ 203. Compensation to Members of Congress, officers, and others in matters affecting the Government

“(a) Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receives or agrees to receive, or asks, demands, solicits, or seeks, any compensation for any services rendered or to be rendered either by himself or another—

“(1) at a time when he is a Member of Congress, Member of Congress Elect, Resident Commissioner, or Resident Commissioner Elect; or

“(2) at a time when he is an officer or employee of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States, including the District of Columbia,

in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, court-martial, officer, or any civil, military, or naval commission, or

“(b) Whoever, knowingly, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly gives, promises, or offers any compensation for any such services rendered or to be rendered at a time when the person to whom the compensation is given, promised, or offered, is or was such a Member, Commissioner, officer, or employee—

“Shall be fined not more than \$10,000 or imprisoned for not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States.

“(c) A special Government employee shall be subject to subsection (a) only in relation to a particular matter involving a specific party or parties (1) in which he has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or (2) which is pending in the department or agency of the Government in which he is serving: *Provided*, That clause (2) shall not apply in the case of a special Government employee who has served in such department or agency no more than sixty days during the immediately preceding period of three hundred and sixty-five consecutive days.

“§ 204. Practice in Court of Claims by Members of Congress

“Whoever, being a Member of Congress, Member of Congress Elect, Resident Commissioner, or Resident Commissioner Elect, practices in the Court of Claims, shall be fined not more than \$10,000 or imprisoned for not more than two years, or both, and shall be incapable of holding any office of honor, trust, or profit under the United States.

“§ 205. Activities of officers and employees in claims against and other matters affecting the Government

“Whoever, being an officer or employee of the United States in the executive, legislative, or judicial branch of the Government or in any agency of the United States, including the District of Columbia, otherwise than in the proper discharge of his official duties—

“(1) acts as agent or attorney for prosecuting any claim against the United States, or receives any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim, or

“(2) acts as agent or attorney for anyone before any department, agency, court, court-martial, officer, or any civil, military, or naval commission in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest—

“Shall be fined not more than \$10,000 or imprisoned for not more than two years, or both.

“A special Government employee shall be subject to the preceding paragraphs only in relation to a particular matter involving a specific party or parties (1) in which he has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or (2) which is pending in the department or agency of the Government in which he is serving: *Provided*, That clause (2) shall not apply in the

case of a special Government employee who has served in such department or agency no more than sixty days during the immediately preceding period of three hundred and sixty-five consecutive days.

"Nothing herein prevents an officer or employee, if not inconsistent with the faithful performance of his duties, from acting without compensation as agent or attorney for any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings.

"Nothing herein or in section 203 prevents an officer or employee, including a special Government employee, from acting, with or without compensation, as agent or attorney for his parents, spouse, child, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except in those matters in which he has participated personally and substantially as a Government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which are the subject of his official responsibility, provided that the Government official responsible for appointment to his position approves.

"Nothing herein or in section 203 prevents a special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with or for the benefit of, the United States provided that the head of the department or agency concerned with the grant or contract shall certify in writing that the national interest so requires.

"Such certification shall be published in the Federal Register.

Publication in
F. R.

"Nothing herein prevents an officer or employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

"§ 206. Exemption of retired officers of the uniformed services

"Sections 203 and 205 of this title shall not apply to a retired officer of the uniformed services of the United States while not on active duty and not otherwise an officer or employee of the United States, or to any person specially excepted by Act of Congress.

"§ 207. Disqualification of former officers and employees in matters connected with former duties or official responsibilities; disqualification of partners

"(a) Whoever, having been an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, after his employment has ceased, knowingly acts as agent or attorney for anyone other than the United States in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and in which he participated personally and substantially as an officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, while so employed, or

"(b) Whoever, having been so employed, within one year after his employment has ceased, appears personally before any court or department or agency of the Government as agent, or attorney for, anyone other than the United States in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States is a party or directly and substantially interested, and which was under

his official responsibility as an officer or employee of the Government at any time within a period of one year prior to the termination of such responsibility—

“Shall be fined not more than \$10,000 or imprisoned for not more than two years, or both: *Provided*, That nothing in subsection (a) or (b) prevents a former officer or employee, including a former special Government employee, with outstanding scientific or technological qualifications from acting as attorney or agent or appearing personally in connection with a particular matter in a scientific or technological field if the head of the department or agency concerned with the matter shall make a certification in writing, published in the Federal Register, that the national interest would be served by such action or appearance by the former officer or employee.

Publication in
F. R.

“(c) Whoever, being a partner of an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, acts as agent or attorney for anyone other than the United States, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest and in which such officer or employee of the Government or special Government employee participates or has participated personally and substantially as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or which is the subject of his official responsibility—

“Shall be fined not more than \$5,000, or imprisoned not more than one year, or both.

“A partner of a present or former officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia or of a present or former special Government employee shall as such be subject to the provisions of sections 203, 205, and 207 of this title only as expressly provided in subsection (c) of this section.

“§ 208. Acts affecting a personal financial interest

“(a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest—

“Shall be fined not more than \$10,000, or imprisoned not more than two years, or both.”

“(b) Subsection (a) hereof shall not apply (1) if the officer or employee first advises the Government official responsible for appointment to his position of the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such

official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee, or (2) if, by general rule or regulation published in the Federal Register, the financial interest has been exempted from the requirements of clause (1) hereof as being too remote or too inconsequential to affect the integrity of Government officers' or employees' services.

Publication in
F. R.

“§ 209. Salary of Government officials and employees payable only by United States

“(a) Whoever receives any salary, or any contribution to or supplementation of salary, as compensation for his services as an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality; or

“Whoever, whether an individual, partnership, association, corporation, or other organization pays, or makes any contribution to, or in any way supplements the salary of, any such officer or employee under circumstances which would make its receipt a violation of this subsection—

“Shall be fined not more than \$5,000 or imprisoned not more than one year, or both.

“(b) Nothing herein prevents an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States, or of the District of Columbia, from continuing to participate in a bona fide pension, retirement, group life, health or accident insurance, profit-sharing, stock bonus, or other employee welfare or benefit plan maintained by a former employer.

“(c) This section does not apply to a special Government employee or to an officer or employee of the Government serving without compensation, whether or not he is a special Government employee, or to any person paying, contributing to, or supplementing his salary as such.

Exception.

“(d) This section does not prohibit payment or acceptance of contributions, awards, or other expenses under the terms of the Government Employees Training Act (Public Law 85-507, 72 Stat. 327; 5 U.S.C. 2301-2319, July 7, 1958).”

(b) Sections 214 and 215 of chapter 11 of title 18 of the United States Code are respectively redesignated sections 210 and 211;

(c) Sections 216 and 223 of chapter 11 of title 18 of the United States Code are repealed;

Repeal.

(d) Sections 217, 218, 219, 220, 221, and 222 of chapter 11 of title 18 of the United States Code are respectively redesignated sections 212, 213, 214, 215, 216, and 217;

(e) Chapter 11 of title 18 of the United States Code is further amended by adding at the end thereof the following new section: et seq.

18 USC 201

“§ 218. Voiding transactions in violation of chapter; recovery by the United States

“In addition to any other remedies provided by law the President or, under regulations prescribed by him, the head of any department or agency involved, may declare void and rescind any contract, loan, grant, subsidy, license, right, permit, franchise, use, authority, privilege, benefit, certificate, ruling, decision, opinion, or rate schedule awarded, granted, paid, furnished, or published, or the performance of any service or transfer or delivery of any thing to, by or for any agency of the United States or officer or employee of the United States or person acting on behalf thereof, in relation to which there

has been a final conviction for any violation of this chapter, and the United States shall be entitled to recover in addition to any penalty prescribed by law or in a contract the amount expended or the thing transferred or delivered on its behalf, or the reasonable value thereof."

Repeal.

SEC. 2. Sections 281 and 283 (except as they may apply to retired officers of the armed forces of the United States), 282 and 284 of chapter 15 of title 18, section 434 of chapter 23 of title 18, and section 1914 of chapter 93 of title 18 of the United States Code are repealed and will, respectively, be supplanted by sections 203, 205, 204, 207, 208, and 209 of title 18 of the United States Code as set forth in section 1 of this Act. All exemptions from the provisions of sections 281, 282, 283, 284, 434, or 1914 of title 18 of the United States Code heretofore created or authorized by statute which are in force on the effective date of this Act shall, on and after that date, be deemed to be exemptions from sections 203, 204, 205, 207, 208, or 209, respectively, of title 18 of the United States Code except to the extent that they affect officers or employees of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, as to whom they are no longer applicable.

Exemptions.

Repeal.

SEC. 3. Section 190 of the Revised Statutes (5 U.S.C. 99) is repealed.

Effective date.

SEC. 4. This Act shall take effect ninety days after the date of its enactment.

Approved October 23, 1962.

